संख्या-5/2016/253/18-2-2016-3(एसपी)/2010

प्रेषक,

आलोक रंजन,
मुख्य सचिव,
उत्तर प्रदेश।

सेवा में,

1- समस्त प्रमुख सचिव/सचिव,
उत्तर प्रदेश शासन।

2- समस्त विभागाध्यक्ष,
उत्तर प्रदेश।

3- आयुक्त एवं निदेशक,
उद्योग एवं उद्यम प्रोत्साहन उ0प्र0
कानपुर।

सूक्ष्म, लघु एवं मध्यम उद्यम अनुभाग-2 लखनऊः दिनांकः 01 अप्रैल, 2016

विषय-उत्तर प्रदेश प्रोक्योरमेन्ट मैनुअल (प्रोक्योरमेन्ट ऑफ गुड्स) का प्रख्यापन

महोदय,

राजकीय विभागों में सामग्री क्रय संबंधी विद्यमान 'स्टोर परचेज रूल्स' दिनांक 13 मार्च, 1935 को जारी राज्य सरकार की अधिसूचना संख्या-905/ XVIII-652 द्वारा प्रख्यापित किये गये थे, जो वित्तीय नियम संग्रह खण्ड-V भाग-1 के परिशिष्ट- XVIII में उपलब्ध हैं। यह नियम मात्र 12 पृष्ठों में हैं और इसके अतिरिक्त कुछ अनुलग्नक भी समय-समय पर जोड़े गये हैं। इन नियमों के प्रख्यापन से 81 वर्ष की लम्बी अवधि में मामूली संशोधन हुये हैं, जो कमोबेश तदर्थ आधार पर मौद्रिक सीमाओं में वृद्धि करने तक सीमित रहे। शासन स्तर पर यह अनुभव किया गया कि समय के साथ बदलती परिस्थितियों में यह नियम काफी सीमा तक अप्रासंगिक हो गये हैं।

2- उपर्युक्त पृष्ठभूमि में उत्तर प्रदेश शासन द्वारा वर्ष 2014-15 में भण्डार क्रय प्रक्रियाओं का सरलीकरण एवं विकेन्द्रीकरण हेतु सूत्र संख्या-223 विकास एजेण्डा में सम्मिलित किया गया। इसी मध्य उत्तर प्रदेश प्रोक्योरमेन्ट मैनुअल (प्रोक्योरमेन्ट ऑफ गुड्स) के नवलेखन की आवश्यकता के दृष्टिगत सरकारी विभागों में प्रयोग की जाने वाली सामग्री के क्रय के लिये प्रोक्योरमेन्ट मैनुअल का ड्राफ्ट तैयार करने के उद्देश्य से शासन द्वारा एक सेल का गठन किया गया। उक्त सेल द्वारा उत्तर प्रदेश प्रोक्योरमेन्ट मैनुअल (प्रोक्योरमेन्ट ऑफ गुड्स) का आलेख तैयार करने के संबंध में केन्द्र सरकार के 'मैनुअल फार परचेज आफ गुड्स' प्रोक्योरमेन्ट संबंधी संसद में प्रस्तुत दि पब्लिक प्रोक्योरमेन्ट बिल, 2012 (बिल संख्या-58 आफ 2012), विभिन्न राज्य सरकारों के प्रोक्योरमेन्ट मैनुअल तथा कतिपय सरकारों द्वारा

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नहीं है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

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बनाये गये अधिनियम, सेन्ट्रल विजिलेन्स कमीशन द्वारा समय-समय पर जारी दिशा-निर्देश तथा मा0 सर्वोच्च न्यायालय के कतिपय उपलब्ध निर्णयों के अन्तर्गत पब्लिक प्रोक्योरमेन्ट के संबंध में प्रतिपादित सिद्धान्तों का अध्ययन किया गया। तदनन्तर अंतर्विभागीय विचार-विमर्श के उपरान्त मैनुअल को अंतिम रूप दिया गया है जिसमें कुल 24 अध्याय एवं 01 परिशिष्ट सम्मिलित हैं।

3- अतः सम्यक विचारोपरान्त उत्तर प्रदेश प्रोक्योरमेन्ट मैनुअल (प्रोक्योरमेन्ट ऑफ गुड्स) (संलग्नक-अंग्रेजी में) को भारत के संविधान के अनुच्छेद-166(2) व (3) के अन्तर्गत प्रख्यापित करते हुये मुझे यह कहने का निदेश हुआ है कि इस विषयवस्तु से संबंधित वित्तीय नियम संग्रह खण्ड-V भाग-1 के परिशिष्ट- XVIII एवं उसके अनुलग्नक के संबंधित प्राविधान इस सीमा तक संशोधित समझे जायेंगे।

4- इस संबंध में मुझे यह भी कहने का निदेश हुआ है कि -

(1) सामग्री क्रय संबंधी अधिकारों की मौद्रिक सीमा में वृद्धि सक्षम स्तर के अनुमोदनोपरान्त की जा सकेगी।

(2) क्रय प्रक्रिया के अन्तर्गत विभिन्न प्रयोजनों के लिये सक्षम स्तर का निर्धारण शासन स्तर पर सक्षम स्तर के अनुमोदन से किया जायेगा।

(3) क्रय प्रक्रिया के अन्तर्गत गठित की जाने वाली विभिन्न समितियों के अधिकारों का निर्धारण शासन स्तर से सक्षम स्तर के अनुमोदनोपरान्त किया जायेगा।

(4) उत्तर प्रदेश प्रोक्योरमेन्ट मैनुअल (प्रोक्योरमेन्ट ऑफ गुड्स) के क्रियान्वयन हेतु संबंधित विभागों द्वारा शासनादेश निर्गत किये जायेंगे तथा उत्तर प्रदेश प्रोक्योरमेन्ट मैनुअल (प्रोक्योरमेन्ट ऑफ गुड्स) के क्रियान्वयन में आने वाली कठिनाईयों के निराकरण तथा संबंधित प्राविधानों की व्याख्या शासन स्तर पर सक्षम स्तर के अनुमोदनोपरान्त की जायेगी।

5- उक्त मैनुअल का हिन्दी रूपान्तर बाद में यथासमय निर्गत किया जायेगा।

कृपया तदनुसार आवश्यक कार्यवाही सुनिश्चित की जाय।

संलग्नक-यथोक्त।

भवदीय

आलोक रंजन
मुख्य सचिव।

संख्या एवं दिनांक तदैव

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित-

1- महालेखाकार (आडिट) प्रथम/द्वितीय, उ0प्र0, इलाहाबाद।
2- प्रमुख सचिव, श्री राज्यपाल, उत्तर प्रदेश, राजभवन,लखनऊ।
3- प्रमुख सचिव, मा0 मुख्यमंत्री जी, उत्तर प्रदेश।

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नहीं है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

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4- स्टाफ आफीसर, मुख्य सचिव, उत्तर प्रदेश शासन।

5- समस्त प्रमुख सचिव/सचिव, उ0प्र0 शासन को इस आशय से प्रेषित कि कृपया अपने अधीनस्थ समस्त विभागाध्यक्षों/कार्यालयाध्यक्षों व प्राधिकरणों को शासनादेश अनुपालन हेतु सम्यक निर्देश अपने स्तर से जारी करें।

6- अध्यक्ष, केन्द्रीय सतर्कता आयोग, भारत सरकार, नई दिल्ली।

7- निदेशक, स्थानीय निधि लेखा परीक्षा, उ0प्र0, इलाहाबाद।

8- वित्त (व्यय नियंत्रण) अनुभाग-6/वित्त (लेखा) अनुभाग-1

9- सचिवालय के समस्त अनुभाग/गार्ड फाइल ।

आज्ञा से,

डा0 रजनीश दुबे
प्रमुख सचिव।

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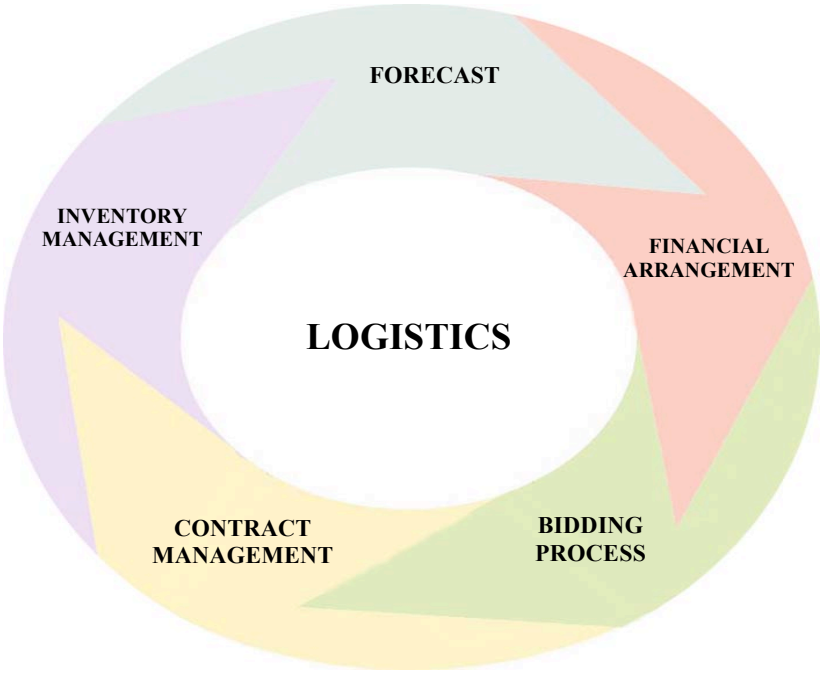
1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नहीं है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

UTTAR PRADESH

PROCUREMENT MANUAL

(Procurement of Goods)



DEPARTMENT OF MICRO, SMALL AND MEDIUM ENTERPRISES

GOVERNMENT OF UTTAR PRADESH

2016

UTTAR PRADESH

PROCUREMENT MANUAL

(Procurement of Goods)

(First Edition)

DEPARTMENT OF MICRO, SMALL AND MEDIUM ENTERPRISES

GOVERNMENT OF UTTAR PRADESH

2016

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UTTAR PRADESH PROCUREMENT MANUAL
(Procurement of Goods)

CHAPTER - 1

EXTENT OF APPLICATION

1.1 This Manual contains rules made by the Governor of Uttar Pradesh in exercise of the powers conferred on him by Article 166 (2) and (3) of the Constitution of India for procurement of goods in Government departments. These rules supersede the U.P. Stores Purchase Rules contained in Appendix IX of Industries Department Manual which are also reproduced in Appendix XVIII of Financial Handbook Volume-V Part-I. These rules shall come into force on 1st April, 2016.

Applicability

1.2 These rules are applicable to the procurement of goods by the procuring entities of all Government departments, their attached and subordinate offices.

Provided that the provisions of this manual, in so far as they are inconsistent with the procedure specified in respect of the schemes/projects funded by the Central Government, International Financial Agencies or schemes/projects covered under International Agreements, shall not apply to procurement of goods for such schemes/projects.

1.3 In regard to particular classes of goods such as stationery and printing stores, clothing and liveries, medicines, seeds, fertilizers etc., these rules shall be supplemented by the special rules contained in the Codes and Manuals of the departments concerned to the extent, they are consistent with these rules.

Exceptions to Applicability

1.4 The provisions of these rules shall not apply in the following cases:

(a) emergency procurement necessary for the management of any disaster, as defined:

(1) in clause (g) of section 2 of the Uttar Pradesh Disaster Management Act, 2005, (U.P. Act No. 20 of 2005) (as amended from time to time); and

(2) in clause (d) of section 2 of the Disaster Management Act, 2005 (Central Act No. 53 of 2005).

(b) procurement for the purposes of national security or on strategic considerations that the Central Government may, by general or special order, specify.

The rules made by the Central Government regulating the procuring entities or the procurements covered under sub para (a) (2) and (b) above, shall be applicable in respect of such procurement.

(c) procurement of goods during the period of emergency declared under the provisions of the Constitution of India.

(d) procurement of goods by one Government department from another.

Power to remove difficulties

1.5 If any clarification is required or difficulty arises in giving effect to the provisions of these rules, Government may make such provisions not inconsistent with the provisions of these rules, as may appear to it, to be necessary for removing the difficulty.

CHAPTER - 2

DEFINITIONS AND GENERAL EXPLANATIONS

Terms defined/explained

2.1 Unless there is something repugnant in the subject or context, the terms defined in this Chapter are used in this Manual in the sense here explained:

(1) **ABC analysis** means a technique of classifying stores according to value and selecting the vital few from the trivial many.

(2) **Acceptance Letter (AL)** : When a purchase order is decided to be placed with the tenderer, whose tender has been accepted, such tenderer is informed under a specific letter that Government/ competent authority has decided to accept the tender and to enter into contract and this letter is called Acceptance Letter.

(3) **Advance Sample** means the sample, which is to be submitted by the contractor for approval by the competent authority when so stipulated in the contract, before the bulk supply is manufactured and offered for inspection.

(4) **Air Consignment Note or Air Way Bill (AWB)** is a prime transport document in airfreight. It is a receipt issued by an Airline for goods and evidence of the contract of carriage but it is not a document of title to the goods.

(5) **Ancillary Industries** means ancillary industrial undertakings as defined in section 3(aa) of Industries (Development and Regulation) Act, 1951 from time to time.

(6) **Bid** means an offer made in pursuance of an invitation by a procuring entity and includes any tender, proposal or quotation.

(7) **Bid security/Earnest Money Deposit (EMD)** means any security provided to the procuring entity by bidders for securing the

fulfillment of any obligation in terms of the provisions of the bidding document.

(8) **Bidder** means any legal entity participating in a procurement process with a procuring entity.

(9) **Bidder registration document** means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register.

(10) **Bidding document** means a document issued by the procuring entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid.

(11) **Bill of Entry** means a document in which the importer or his agent is required to declare the goods before these are landed. It attests the facts that goods of dutiable nature or otherwise of specified quantity, value and description are entering the bounds of the country. It is prepared in triplicate by the importer on the forms given or furnished by the customs authorities.

(12) **Bill of Lading** means a document issued by the ship owner or by the Master of the ship or other agent which states that goods mentioned therein have been taken on board the ship under the terms specified in it. It serves as (1) an acknowledgement for the receipt of goods loaded on the ship, (2) an evidence of the contract of affreightment, (3) a document of title to goods, and (4) a quasi negotiable instrument like Railway Receipt.

(13) **Book Transfer** means the process whereby financial transactions which do not involve the giving or receiving of cash or of stock materials, are brought to account.

(14) **Branded item** means the name of the product that is made by a particular company and approved by the Director General of Trade Marks and Patents, Government of India, Kolkata.

(15) **Budget Manual** means Uttar Pradesh Budget Manual.

(16) **Competent Authority** means an authority declared as such for the purpose by the Government.

(17) **Consignee** means the person to whom the stores are required by the acceptance of tender / the supply order to be delivered in the manner therein specified.

(18) **Contractor** means the person with whom the contract is made and includes his heirs, executors, administrators or successors and permitted assignees, as the case may be.

(19) **Corporation** means a body corporate legally authorised to act as a single person.

(20) **Cost, Insurance and Freight** (CIF) contracts are contracts for the sale of goods involving carriage by sea. In this type of contract, the price includes cost of goods, insurance and freight.

(21) **Cost plus contract** means a contract wherein one of the parties undertakes to pay all costs incurred by the party in the performance of the contract and fee payable over and above such costs. The fee payable depends upon the agreement of the parties.

(22) **Electronic reverse auction** means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively lowered bids during a scheduled period of time and the automatic evaluation of bids.

(23) **FOR destination**- When a contract is arranged on FOR destination basis, the contractor is understood to undertake to deliver goods of the contract description within the time named in

the contract at the place of the consignee named in the contract at his own expenses.

(24) **Framework Agreement** means an agreement between a State Purchase Organisation or procuring entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include agreement on prices which may be either pre-determined or be determined at the stage of actual procurement through competition or a process allowing their revision without further competition.

(25) **Free on Board** (FOB) - Where goods are purchased on FOB basis, the duty of the contractor is to deliver the goods on board ship at his own expenses for carriage to the purchaser. The purchaser is liable for freight and other subsequent charges. When dealing with firms in U.S.A. the expression 'Free on board a ship in (city) harbor' should be specified in place of plain brief expression of 'FOB (city)', as in America, the term FOB frequently means free on board a railway wagon.

(26) **Free on rail** (FOR) Station of Dispatch- When a contract is arranged on FOR station of dispatch basis the contractor is understood to undertake to deliver the goods of the contract description within the time named in the contract into a railway wagon or at the stations (depending on the practice of the particular railway) at his own expense.

(27) **Goods** includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock, drugs, chemicals, oil and oil seeds, articles of stationery or such other category of goods purchased or otherwise

acquired by a procuring entity for consumption, use or distribution in discharge of its public duties and includes services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance if the value of the services or works or both does not exceed that of the goods themselves; but excluding books, periodicals, publication etc. for a library.

(28) **Government** means the Government of Uttar Pradesh.

(29) **Indent** means a requisition in prescribed form for supply of specified goods, which enables the procurement officer to commence and effect the procurement of the goods.

(30) **Indian Supply Mission, London/Washington-** These are sister wings of DGS&D to arrange purchase and import of goods for Government indenters.

(31) **Inspection** means the functions connected with the Quality Assurance of supplies being made against the contract at pre-dispatch stage at the works of the manufacturer. This includes examination of the lot/batch for uniformity in quality on visual examination, sampling, and preparation of samples and testing in a laboratory with equipment of technical range, accuracy, so as to certify the conformance to the contract specifications.

(32) **Invitation to bid** means a document and any amendment thereto published by the procuring entity inviting bids relating to the subject matter of procurement and includes notice inviting tender and request for proposal.

(33) **Invitation to pre-qualify** means a document including any amendment thereto published by the procuring entity inviting offers for pre-qualification from prospective bidders.

(34) **Invitation to register** means a document including any

amendment thereto published by the procuring entity inviting offers for bidder registration from prospective bidders.

(35) **Liquidated Damages** means damages to be recovered for late delivery of goods/cancellation of contract for non-supply of goods.

(36) **Logistics** is a military term synonymous with supply management. It implies (1) requirement (2) procurement, and (3) distribution which in brief embraces all activities of material management.

(37) **Lump sum contract** means a contract wherein the contractor agrees to perform the work as shown on the drawings and described by the specifications for a specified lump sum.

(38) **Manufacturer** means a firm that makes or processes goods, especially in large quantities and by means of industrial machines / industrial operations.

(39) **NMI Certificate** means 'Not manufactured in India' certificate accorded by Director General of Technical Development (DGTD), Udyog Bhawan, Maulana Azad Road, New Delhi, which is necessary to secure exemption from payment of customs duty.

(40) **Notification** means a notification published in the Official Gazette.

(41) **Offset** means any condition imposed on a bidder in relation to a particular procurement so as to encourage local development by means of domestic content, transfer of technical knowhow, licensing of technology, skill development, counter-trade, investment or other similar requirements.

(42) **Periodical Type Testing** means the type testing which is repeated periodically to check that the manufacture of the product is being made with materials, components, sub assemblies, process etc. in accordance with the parameters laid down in the design. This

testing is got carried out on samples drawn from the regular production lots put up for acceptance inspection on an independent laboratory.

(43) **Pre-qualification document** means the document including any amendment thereto issued by a procuring entity, which sets out the terms and conditions of the pre- qualification process and includes the invitation to pre-qualify.

(44) **Pre-qualification procedure** means the procedure set out to identify, prior to inviting bids, the bidders that are qualified.

(45) **Prescribed** means prescribed by Government.

(46) **Procurement contract** means a contract entered into between the procuring entity/SPO and a successful bidder relating to the subject matter of procurement.

(47) **Procurement or Public procurement** means acquisition by purchase, lease, license or otherwise of goods, by a procuring entity, whether directly or through an agency with which a contract for procurement is entered into, but does not include any acquisition of goods, without consideration and the term procure or procured shall be construed accordingly.

(48) **Procurement process** means the process of procurement extending from the issue of invitation to pre-qualify or to register or to bid, as the case may be, till the award of the procurement contract.

(49) **Procuring entity** means:

(a) any department of Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated; and

(b) any other legal entity (board or corporation or authority or society or

trust or autonomous body - by whatever name called) which Government may, by an order, specify to be a procuring entity for procurement of goods for Government departments, their attached and subordinate offices. In such a case, these rules shall be applicable *mutatis mutandis*.

(50) **Proprietary Article** means items the manufacture, production or sale of which is controlled by exclusive rights under Patent Laws.

(51) **Prospective bidder** means any person including a consortium (that is, association of several persons, or firms or companies) likely to be a bidder.

(52)**Purchase Officer** means an officer authorised to sign the acceptance of tender.

(53) **Rate contract** means a contract for the supply of goods at specified rate during the period covered by the contract.

(54) **Registered bidder** means any bidder who is on a list of registered bidders of the procuring entity or SPO.

(55) **Risk Purchase** means repurchase of the goods at the risk and cost of the defaulting contractor or any instalment thereof within the period fixed for such delivery or any time he repudiates a contract before the expiry of such period.

(56) **Running Contract** means a contract for the supply of an approximate quantity of goods at a specified price during a certain period.

(57) **Sealed Samples** means samples (other than standard samples) sealed either by indenters or by the SPO to guide supply and inspection. These may be either 'Complete samples' or 'Incomplete Samples'

(58) **Solitary Offer** means a case in which only one offer remains valid or considered valid for opening of the Financial Bid.

(59) **State** means the State of Uttar Pradesh.

(60) **State Purchase Organisation (SPO)** means Commissioner and Director of Industries, Uttar Pradesh or a procuring entity which is authorised by Government by an order, made in this behalf, to make procurement for one or more procuring entities or to enter into rate contracts or framework agreements for procurement by other procuring entities.

(61) **Stockist** is one who undertakes to maintain stocks of a specified product at or above a certain minimum in return for favourable buying terms granted by the manufacturer of the product.

(62) **Subject matter of procurement** means any item of procurement in the form of goods.

(63) **Tender Sample** means the sample submitted by a contractor along with his tender.

(64) **UNESCO Coupons -** These are like cash vouchers issued by UNESCO for the purchase of scientific equipment etc. No import license is necessary for purchases through UNESCO Coupons.

(65) **Value Analysis** means the study of the relationship of the design, function and cost of any product, material or service with the object of reducing cost by modified design or material specification, more efficient processes, change in source of supply (external or internal), or, possibly, elimination of a component or its incorporation into a related item. The overriding consideration is that quality and reliability must be retained.

(66) **Warranty** is a stipulation collateral to the main purpose of the contract, the breach of which gives the buyer a right to claim for damages. It secures a guarantee for a trouble free service for a prescribed period in respect of machinery and equipment.

(67) **There may be two or more widely used terminologies bearing the same meaning as mentioned below:**

(1) Tender, Bid, Quotation. (meaning: offer received from a supplier)

(2) Tenderer, Bidder. (meaning: an entity who seeks to supply goods by sending tender/bid)

(3) Tender Enquiry Document, Tender Document, Bidding Document. (meaning: a detailed document issued by the purchaser specifying his needs and the requirements that a potential tenderer/bidder must meet)

(4) Notice Inviting Tenders, Notice Inviting Bids, Invitation for Bids, Tender Enquiry (meaning: advertisement containing brief details of the requirement)

(5) Earnest Money Deposit, Bid Security. (meaning: monetary guarantee furnished by a tenderer along with its tender)

(6) Security Deposit, Performance Security. (meaning: monetary guarantee furnished by the successful tenderer for due performance of the contract concluded with it)

(7) Ad-hoc Contract, Quantity Contract (meaning: a contract wherein the quantified requirements of specified item(s) are to be delivered in specified period)

(8) Acceptance Letter, Letter of Acceptance, Notification of Award (meaning : written Communication to the successful bidder(s) indicating specifications, rate of goods and other terms and conditions of contract. In the same communication the successful bidder(s) is/are also advised by the procuring entity to complete the requirements within a specified time, including furnishing Performance Security and signing of agreement to conclude the procurement contract)

Abbreviations

2.2 Some Abbreviations commonly used in procurement procedure are listed below for ready reference:

ACASH	Association of Corporations and Apex Societies of Handlooms
AL	Acceptance Letter
AMC	Annual Maintenance Contract
ATI	Advertised Tender Enquiry
BG	Bank Guarantee
BIS	Bureau of Indian Standards
BL	Bill of Lading
CD	Customs Duty
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid
CMC	Comprehensive Maintenance Contract
CPC	Central Purchase Committee
CPSU	Central Public Sector Undertaking
DGS&D	Directorate General of Supplies and Disposals
DGTD	Director General of Technical Development, Government of India
DPC	Departmental Purchase Committee
DP	Delivery Period
ED	Excise Duty
EMD	Earnest Money Deposit
FAS	Free Alongside Ship
FM	Force Majeure
FOB	Free On Board
FOR	Free On Rail
GOI	Government of India
HOD	Head of Department
INCOTERMS	International Commercial Terms
IO	Indenting Officer
KVIC	Khadi and Village Industries Commission
LC	Letter of Credit
LD	Liquidated Damages
LPP	Last Purchase Price
LSI	Large Scale Industries
LTI	Limited Tender Enquiry
MSME	Micro, Small and Medium Enterprises
NIB	Notice Inviting Bids

NSIC	National Small Scale Industries Corporation
NTH	National Test House
PO	Purchase Order
PP	Price Preference
PS	Performance Security
PSU	Public Sector Undertaking
RC	Rate Contract
RFP	Request for Proposal
RFQ	Request for Qualification
RO	Repeat Order
RR	Railway Receipt
SD	Security Deposit
SO	Supply Order
SPO	State Purchase Organisation
SPSU	State Public Sector Undertaking
SSI	Small Scale Industries
ST	Sales Tax
STI	Single Tender Inquiry
TPC	Tender Purchase Committee
UNCITRAL	United Nations Commission on International Trade Law
VAT	Value Added Tax
WDO	Women's Development Organisation

CHAPTER - 3

GENERAL PRINCIPLES OF PROCUREMENT

Procurement Policy

3.1 The policy of Government is to make procurement of goods (including paper and stationery) for the public service in such way as to encourage the development of the industries of the country in general and of Uttar Pradesh in particular to the utmost possible extent consistent with economy and efficiency.

3.2 In order to give effect to the above policy, Purchase preference/Price preference may be given subject to such instructions as may be issued by Government in the Department of Micro, Small and Medium Enterprises. The procuring entity should check the latest instructions issued by Government in this regard.

General Principles of Procurement

3.3 The following general principles should be given due consideration while exercising the procurement functions.

Best value for money

(1) Obtaining the best value for money assumes prime importance in Government where abundant quantities of various types of goods are procured. The basic principle of procuring for the best value can be analysed into the components (a) purchasing at the right price, (b) purchasing the right quantity, (c) purchasing the right quality, (d) purchasing at the right time, and (e) purchasing from the right source.

These components have to be striven after simultaneously. A price will be 'right' only if it fetches the appropriate quantity and quality of goods at the appropriate time.

(2) It is a misnomer to assume that goods with high costs are also goods with high value. The 'value' of goods cannot be judged outside the context of the functions or use to which it is being put. It is quite

possible that the high priced goods may have very low value in the context of a special need or use for which it was intended. Thus value analysis shifts the focus to the function to be performed by the goods from the goods itself.

Transparency, Competition, Fairness and Elimination of Arbitrariness

3.4 Public procurement activities should be conducted in a transparent manner ensuring competition, fairness and elimination of arbitrariness in the system, so as to enable the prospective tenderers to formulate competitive tenders with confidence. Some of the important measures to achieve the same and, thus, secure best value for the money spent are:

(1) The text of the tender document should be user-friendly, self-contained, comprehensive, unambiguous, and relevant to the objective of the purchase. The use of terminology used in common parlance in the industry should be preferred.

(2) The specifications of the required goods should be framed giving sufficient details in such a manner that these are neither too elaborately restrictive as to deter potential tenderers or increase the cost of purchase nor too sketchy to leave scope for sub-standard supply. The specifications must meet the essential requirements of the user department. Efforts should also be made to use standard specifications, which are widely known to the industry.

(3) The tender document should clearly mention the eligibility criteria to be met by the tenderers such as minimum level of experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any

legal restriction, etc.

(4) Prequalification/post qualification (PQ) shall be based entirely upon the capability and resources of the prospective bidders to perform the particular contract satisfactorily, taking into account their (1) experience and past performance on similar contracts for last 2 (two) years (2) capabilities with respect to personnel, equipment and manufacturing facilities (3) financial standing through latest Income Tax Clearance Certificate, Annual report (balance sheet and Profit and Loss Account) of last 3 (three) years. The quantity, delivery and value requirement shall be kept in view, while fixing the Prequalification/post qualification criteria. No bidder should be denied prequalification/post qualification for reasons unrelated to its capability and resources to successfully perform the contract. It should also be kept in view that excessive financial solvency requirements can entail anti-competitive effect.

(5) Restrictions on who is qualified to tender should conform to extant Government policies and be judiciously chosen so as not to stifle competition amongst potential tenderers.

(6) The procedure for preparing and submitting the tenders, deadline for submission of tenders, date, time and place of public opening of tenders, requirement of earnest money and performance security, parameters for determining eligibility of tenders, evaluating and ranking of tenders and criteria for full or partial acceptance of tender and conclusion of contract should be incorporated in the tender enquiry in clear terms.

(7) Tenders should be evaluated in terms of the criteria already

incorporated in the tender document, based on which tenders have been received. Any new condition, which was not incorporated in the tender document, should not be brought into consideration while evaluating the tenders.

(8) Sufficient time should be allowed to the tenderers to prepare and submit their tenders.

(9) Suitable provisions should be kept in the tender document allowing the tenderers reasonable opportunity to question the tender conditions, tendering process, and/or rejection of its tender and the settlement of disputes, if any, emanating from the resultant contract.

(10) It should be made clear in the tender document that tenderers are not permitted to alter or modify their tenders after expiry of the deadline for receipt of tender till the date of validity of tenders and if they do so, their earnest money will be forfeited.

(11) Negotiations with the tenderers must be severely discouraged. However, in exceptional circumstances, where price negotiations are considered unavoidable, the same may be resorted to, but only with the lowest evaluated responsive tenderer (L1), and that too with the approval of the competent authority, after duly recording the reasons for such action.

(12) The name of the successful tenderer to whom the supply contract is awarded should be appropriately notified by the purchase department for the information of general public, including display at notice board, periodical bulletins, website, etc.

Efficiency, Economy and Accountability

3.5 Public procurement procedures must conform to exemplary norms of best practices to ensure efficiency, economy and accountability in the system. To achieve this objective, the following key areas should be taken care of:

(1) In order to reduce delays, each department should prescribe appropriate time frame for each stage of procurement; delineate the responsibility of different officials and agencies involved in the purchase process and delegate, wherever necessary, appropriate purchase powers to the lower functionaries with due approval of the competent authority.

(2) Each department should ensure conclusion of contract within the original validity of the tenders. Extension of tender validity must be discouraged and resorted to only in absolutely unavoidable, exceptional circumstances with the approval of the competent authority after duly recording the reasons for such extension.

(3) A procuring entity should neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligations to obtain sanction of a higher authority or to limit competition among bidders.

However, in the interest of efficiency, economy and timely procurement, a procuring entity may for reasons to be recorded in writing, divide its procurement into appropriate packages.

3.6 In order to promote transparency and efficiency, information and communications technology should be utilised in the conduct of procurement procedures. There shall be a single State Portal to serve as the primary source of information on Government procurement. All

notices inviting bids (NIB) as also awards of contract, and other related information must be posted in the bulletin board of the State Portal, in addition to the posting on the website of the procuring entity (department) concerned.

Financial Arrangements

3.7 The following conditions must be satisfied for incurring expenditure on procurement.

(1) There should be specific authority or sanction for the procurement.

Explanation-(1) Sanction of items of 'New Expenditure' is accorded by Government after obtaining the approval of Legislature (refer to para-59 of Budget Manual).

Explanation-(2) Sanction from lump provisions made under para-31 of Budget Manual is also accorded by Government after obtaining the approval of the competent authority as per procedure laid own in para-94 ibid.

Explanation-(3) Sanctions of the items other than those indicated above are accorded by Administrative Departments/subordinate authorities. The statements showing financial powers delegated to Administrative Departments/subordinate authorities are given in Financial Handbook Volume-I.

(2) The authority or sanction to incur the expenditure or make the advance or payment, shall not be operative unless funds required to meet it have been appropriated by competent authority in accordance with the rules contained in the Budget Manual; and

(3) No breach of the **standards of financial propriety**, which are mentioned below, is involved:

(1) The expenditure should not be *prima facie* more than the

occasion demands. Every government servant should exercise the same vigilance and care in respect of expenditure from public moneys under his control as a person of ordinary prudence would exercise in respect of expenditure of his own money.

(2) Public money should not be utilised for the benefit of a particular person or section of the community unless-

(a) the amount of expenditure involved is insignificant, or

(b) a claim for the amount can be enforced in a court of law, or

(c) the expenditure is in pursuance of a recognised policy or custom.

(3) No authority should exercise its power of sanctioning expenditure to pass an order directly or indirectly to its own advantage.

(4) The amount of allowances, such as travelling allowances, granted to meet expenditure of a particular type, should be so regulated that the allowances are not on the whole sources of profit to the recipients.

3.8 **Some principles on public procurement laid down by the Supreme Court of India are given in the Annexure to this chapter.**

ANNEXURE

Some principles on public procurement laid down by the Supreme Court of India

(Ref. para 3.8)

The Supreme Court judgments have guided the procurement processes in India and put checks from time to time on inefficient procurement processes. The principles developed by the Supreme Court on procurement by public authorities are summarised below -

(1) Government organizations are not allowed to work in secrecy in dealing with contracts, barring rare exceptions.

(2) Reasons for administrative decisions must be recorded, based on facts or opinions of knowledgeable persons again based on facts.[1]

(3) Adequate publicity is essential.[2]

(4) Officers engaged in public procurement have to perform fiduciary duty.[3]

(5) There has to be fair play in actions for procurement.[4]

(6) Bid evaluation has to be strictly in accordance with the bid evaluation criteria stated while inviting the bids.[5]

(7) Procurement policies must be informed by reason, be fair, transparent, non-discriminatory and non-arbitrary[6].

(8) If tender condition permits relaxation and it is granted for bonafide purposes, then the court should hesitate to intervene[7].

(9) The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution.

However, in rare and exceptional cases, for instance, during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through private negotiations[8].

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1. *G.B. Mahajan* v. *Jalgaon Municipal Corporation* JT 1990 (2) SC 401
2. *Committee of Management of Pachaiyappa's Trust* v. *Official Trustee of Madras & Another* (1994) SCC 475
3. *Delhi Science Forum* v. *U.O.I.* 1996 (2) SCALE 218
4. *Mahesh Chandra* v. *Regional Manager, U.P. Financial Corporation and others,* JT 1992 (2) SC 326
5. *M/s Prestress India Corporation* v. *U.P. State Electricity Board and others* 1988 (Supp) SCC 716
6. *Erusian Equipment and Chemicals* v. *State of West Bengal* 1975(1) SCC.
7. *Raunaq International Limited* v. *I.V.R. Construction Limited and others* 1999(1) SCC 492
8. *Nagar Nigam, Meerut* v. *A1 Faheem Meat Export Pvt. Ltd*.-SLP (civil) No. 10174 of 2006.

CHAPTER - 4

GENERAL PRINCIPLES OF ENTERING INTO CONTRACTS

Governing Laws in Purchases

4.1 In order that public funds may not be depleted by clandestine contracts by any and every public servant, there should be definite procedure according to which contracts must be made. The law that governs the procedure to be followed is embodied in Article 299 of the Constitution of India. Further, the Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale or purchase of goods in general.

General Guidelines for Entering into Contracts

4.2 The procuring entity has to provide prospective bidders all the necessary information that they need to prepare their bids. The bidding documents issued by the procuring entity, therefore, must clearly and adequately define, among others:

(1) the objectives, scope and expected outputs and/or results of the proposed contract,

(2) the technical specifications of goods to be procured,

(3) expected contract duration, the estimated quantity, delivery schedule and/or time frame,

(4) the obligations, duties and/or functions of the successful bidder, and

(5) the minimum eligibility requirements of bidders, such as track record, production capacity, financial position.

4.3 The following general guidelines are also to be adopted by authorities competent to enter into a contract-

(1) Save in exceptional circumstances, no purchases of any kind should be commenced without prior execution of contract

documents. Even in cases where a formal written contract is not made, no order for supplies etc. should be placed without at least written agreement as to the price.

(2) The terms of a contract must be precise and definite and there must be no room for ambiguity or misconstruction.

(3) No contract involving an uncertain or indefinite liability or any conditions of an unusual character should be entered into without the previous consent of Government.

(4) Subject to adequate prior scrutiny of terms, general or special, if any, standard forms of contracts should be adopted, wherever possible. The alternatives used in the standard forms, which are not applicable, should be invariably scored out in consultation with Government.

(5) In cases where standard forms of contracts are not used, legal and financial advice should be taken in drafting the contract documents before they are finally entered into.

(6) Prospective bidders should be provided the same information, and should be assured of equal opportunities to obtain additional information on a timely basis.

(7) Any additional information, clarification, correction of errors, or modifications of bidding documents should be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. The deadline may be extended, if necessary. Such clarification, correction or modification etc. shall be suitably publicised (also refer para 13.18 of chapter 13).

(8) The terms of a contract once entered into should not be materially varied without the previous consent of the authority competent to enter into the contract as so varied. No payments to contractor by

way of compensation or otherwise, outside the strict terms of the contract or in excess of the contract rates may be authorised without the previous approval of the competent authority.

(9) No relaxation of specifications agreed upon in a contract or relaxation of the terms of an agreement entered into by Government should be made without proper examination of the legal and financial implications involved in such relaxation.

(10) The responsibility and financial status of the individuals and tendering firms etc. including its location and registration with the Registrar of Firms, Societies and Chits or any other authority must be taken into consideration in addition to all other relevant factors.

(11) Before entering into a contract or an agreement, all pros and cons should be considered and validity of contract documents ensured.

(12) Provision must be made in contracts for safeguarding Government property entrusted to a contractor and the recovery of hire charges, if any.

(13) Long term contracts should, as far as possible, be avoided. However, if a contract is likely to endure for a period of more than 3(three) years or where the contract provides for a clear schedule for the fulfillment of the various stages of the contract, it should, wherever feasible, include a provision for unconditional power of revocation or cancellation at the discretion of Government at any time on the expiry of reasonable notice to that effect. The period of notice should not normally be longer than 6(six) months.

(14) Clear and specific penalties should be attached to a breach of contract or agreement.

(15) Goods which are likely to depreciate or deteriorate should not be purchased long in advance of the requirements.

(16) All contracts should have a provision for recovery of liquidated damages for defaults on the part of the contractor, unless there are any special instructions issued by the competent authority. The terms of contract for the purchase of perishable stores should invariably include a Warranty Clause, a model format of which is given in the Annexure to this chapter. This clause may, however, be modified to suit local conditions.

Once the user department/consignee states/writes that the goods supplied are defective/not functioning properly, it must be obligatory on the part of the supplier to immediately, not later than 7 (seven) days, attend to it by way of rectification/repair or replacement of the goods, without any questioning or pretexts on any ground. There shall be no scope for questioning the user department/consignee or resorting to any kind of verification or joint inspection in this regard.

(17) All contracts for supply of goods should reserve the right of Government to reject goods which do not conform to the specifications.

(18) A schedule of quantities with their issue rates of such materials, which are supplied departmentally, and are used in the contract work, should form an essential part of the contract. It should also contain an escalation clause pertaining to rates of such materials the prices of which are controlled by Government and which the contractor arranges himself, so that Government may get the benefit of any saving in the quantities of the material actually used in execution.

(19) Basic price, taxes, duties and other taxes applicable should invariably be shown in the quoted rates. The question whether any sales/trade tax, VAT, purchase tax, octroi and terminal taxes, other

local taxes are to be paid and if so, by which party, should be settled and cleared up before entering into any contract.

(20) All contracts for purchase involving import of materials from abroad should as a rule provide for purchases on FOB/FAS basis and similarly all sales contracts involving export of materials from India to other countries should be entered into on CIF basis.

Provided that a departure from the procedure prescribed above shall require the prior permission from Ministry of Surface Transport, Government of India.

(21) No purchase should be done under an agreement/contract beyond the date of expiry of its tenure. Wherever it is considered that the purchase has to be continued beyond the date of expiry of the tender, timely action should be taken for renewing the contract/agreement for the further period required, after a suitable review of the provisions of the old agreement/contract to see whether any modifications therein are required/possible. It should, however, be in consonance with the Tender Documents/Request for Proposal.

(22) Where escalation in respect of labour, overheads, customs duties, freight etc. is provided for in a contract, the basis for the calculation of the same should be clearly indicated.

(23) Provision should be made for preventing the sub-letting, assignment or transfer of the whole or part of the contract except with the written permission of the Government officer giving the contract.

(24) No contract should be entered into with or on behalf of a minor, but if a contractor dies, his legal representative, even though a minor, is bound by the terms of the contract (refer section 68 of The Indian Contract Act, 1872).

(25) When a contract has been made with a person for procurement of goods, a second contract in connection with the same item(s) while the first is still in force should not be given to the same person if the sum of the contracts exceeds the power of acceptance of the authority concerned.

(26) As the tender along with the agreement and connected papers form the documents on which a court's decision is based in case of a disputed claim brought by a contractor, it is absolutely necessary to draw up papers correctly in the first instance and to see carefully that there are no omissions. Specific attention should, therefore, be paid to the close scrutiny of all such documents before finally accepting them or submitting them to superior authority.

(27) Officers will be personally responsible for any irregular engagements entered into by them in opposition to or in contravention of the rules or orders issued by Government.

(28) Cost Plus contracts should be avoided except where they are inevitable.

(29) Lump sum contracts should not be entered into except in cases of absolute necessity. Whenever such contracts are entered into, all possible safeguards to protect the interest of Government should invariably be provided for in the conditions of the contract.

(30) Deeds or agreements should be adequately stamped except when the stamp duties chargeable on them are specially remitted under clause (a) of section-9 of the Indian Stamps Act, 1899, and, where necessary, registered under the rules.

(31) The Comptroller and Auditor General and, under his direction other audit authorities have power to examine contracts and to bring before the Public Accounts Committee any case where

competitive tenders have not been sought, or where high tenders have been accepted, or where other irregularities in procedure have come to light.

Authority for Execution of Contracts

4.4 As per Article 299 of the Constitution of India, the contracts and assurances of property made in the exercise of the executive power of State shall be executed on behalf of the Governor of Uttar Pradesh. The word 'for and on behalf of the Governor of Uttar Pradesh' should, therefore, follow the designation appended below the signature of the officer authorised in this behalf.

Article 299 of the Constitution of India reads as below :

(1) All contracts made in exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India hereto before in-force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Note: Various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notification issued by Law Department of Government.

Amendment to Contract

4.5 Many a time, due to various reasons, changes and modifications are needed even in a duly concluded contract. Requests for such changes and modifications mostly emanate from the supplier. Ideally no amendment should be allowed. In case it is required, it should be in consonance with the tender documents. Immediately on receiving such a request, the purchase organisation shall examine the same and take action as necessary with the approval of the competent authority.

Any amendment to contract terms requested by the supplier may have, *inter alia,* financial impact and/or technical impact and/or legal impact. Therefore, before agreeing to the request of the supplier, the purchase organisation should scrutinise the issue on its merits to ensure that the requested amendment will not have any adverse effect on the purchase organisation.

Competent financial concurrence should be obtained before issuing any amendment having financial implications/repercussions. Further, there may be an occasion where consultation with Law Department of Government will be necessary before issuing the proposed amendment.

ANNEXURE

Model format of Warranty Clause

{Ref. para 4.3(16)}

The contractor/seller hereby declares that the goods / stores / articles sold to the buyer under this contract shall be of the best quality (and workmanship) and shall be strictly in accordance with the specifications and particulars contained /mentioned in clause ——— hereof and the contractor/seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of ——————————————— days/months from the date of delivery of the said goods/stores/articles to the purchaser and that notwithstanding the fact that the purchaser (inspector) may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of——————————————days/months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid or have deteriorated (and the decision of the purchaser in that behalf will be final and conclusive) the purchaser will be entitled to reject the said goods/stores/articles or such portion thereof as may be discovered not to conform to the said description and quality. On such rejection the goods / stores / articles will be at the sellers risk and all the provisions herein contained relating to rejection of goods, etc. shall apply. The contractor/seller shall, if so called upon to do, replace the goods, etc. or such portion thereof as is rejected by the purchaser free of cost at the ultimate destination otherwise the contractor/seller shall pay to the purchaser such damages as may arise by reason of the breach of the condition herein contained. Nothing herein contained shall prejudice any other right of the purchaser in that behalf under this contract or otherwise.

CHAPTER - 5

SPECIFICATIONS AND ALLIED TECHNICAL PARTICULARS

Specifications

5.1 Specifications are written instructions to set forth the complete technical requirement of goods to be procured. These shall meet only the actual and essential needs of the users, because 'over specification' will unnecessarily increase the cost and may cut off competition. However, it is also important that specification should not be loosely set so as to compromise quality or functioning etc. One should aim at procuring the latest technology and avoid procurement of obsolete goods. Factors like material used, life span, efficiency, optimum fuel/power consumption, low maintenance cost, environment friendly materials, reduced noise and emission levels etc. should also be taken into account, while deciding the specifications. The mandatory and statutory regulations, if any, applicable for the goods to be procured, should also be taken care of.

5.2 The specifications of goods to be procured shall be decided in such manner that (1) it meets the essential needs of the procuring entity, (2) to the extent practicable -(a) it is objective, functional, generic* and measurable, (b) it sets out required technical qualitative and performance characteristics, (c) any particular trade mark, trade name

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(*) **Example** - A public authority while procuring electric fans and motors, lays down the condition that wiring for fans and motors must be of a particular make wires. This condition carries proprietary element and significantly reduces number of suppliers, who could have supplied fans and motors of given capacity. This is also against the requirement that the specifications should be spelt out in generic terms and not as a particular trademark or brand.

or brand is not indicated, (3) it takes care of the mandatory and statutory regulations, if any, applicable for such procurement. Where applicable, the technical specifications to the extent practicable be based on the national technical regulations or recognised Indian Standards for the required goods. Preference should be given to procure the goods which carry ISI mark. In the absence of recognised Indian Standards, relevant International Standards may be adopted. For any deviations from Indian Standards or for any additional parameters for better performance, specific reasons for deviations/modifications should be duly recorded with the approval of the competent authority.

5.3 Some Departments publish their own standards, which, apart from specifying the technical parameters also specify special requirements of packing, marking, inspection etc.

The technical parameters in such cases may be marginally different from the Indian Standards. In such cases, the general principle shall be to adopt Indian Standards and the departmental specifications could cover only such additional details as packing, marking, inspection etc. as are specially required to be complied for a particular end use.

5.4 In cases where Indian Standards do not exist or, alternatively, decision has been taken to source the foreign markets also, International Standards (like ISO etc.) may be adopted. Where no widely known standards exist, the specifications shall be drawn in a generalised and broad based manner to obtain competitive bids from different sources. Except in case of proprietary purchase from a selected single source, the specifications must not contain any brand name, make or catalogue number of a particular manufacturer and if

the same is unavoidable due to some compelling reasons, it should be followed by the words 'or equivalent'.

5.5 All dimensions incorporated in the specifications shall be indicated in metric units. If due to some unavoidable reasons, dimensions in FPS (Foot, Pound, Second) units are to be mentioned, the corresponding equivalents in the metric system must also be indicated.

5.6 The specifications and the technical details should be expressed with proper clarity without any ambiguity or double meaning. Wherever necessary, the written specifications should be supplemented with drawings for additional clarity. As far as possible, items with standard specifications only should be stipulated in the bid documents. In case, items of non standard specifications are to be procured, reasoning for procuring such items should be recorded and reasonability of rates may be checked before placing order.

5.7 Deciding tender on the basis of tendered sample is too subjective. Therefore, unless specifically decided due to some reasons duly recorded with the approval of competent authority, tender sample clause shall not be incorporated in the specifications. If necessary, suitable stipulations for submission of advance sample (before starting bulk production) by the successful bidder may be incorporated in the specifications.

Essential Technical Particulars

5.8 Technical particulars to be specified in the tender document shall include the following to the extent applicable for a particular procurement:

(1) Scope of supply including quantity required and, also, end use of the required goods.

(2) Specifications, technical parameters and product requirements, expressing the requirement in terms of functional characteristics.

(3) Drawings.

(4) Requirement of ISI mark, where applicable.

(5) Requirement of advance sample, if any, at post contract stage before bulk production.

(6) Special requirements of packing and marking, if any.

(7) Inspection procedure for goods ordered and criteria of conformity.

(8) Requirements of special tests, if any.

(9) Requirement of type test certificate, if any.

(10) Requirement of type approval for compliance of statutory requirements with respect to pollution, emission, noise, etc.

(11) Training, technical support, after sales service and annual maintenance contract requirements, if any.

(12) Warranty requirements.

(13) Qualification criteria of the tenderers.

(14) Any other aspects peculiar to the goods in question like shelf life of the equipment etc.

5.9 If necessary, HOD/procuring entity may constitute a committee to examine the need and finalise the specifications of goods to be procured. The committee may have one or more experts from outside the department also.

5.10 The official/authority formulating the specifications should ensure that the specifications and the allied technical details are complete and correct to meet the user's requirements.

CHAPTER - 6

SOURCES OF SUPPLY AND REGISTRATION OF SUPPLIERS

6.1 A prospective bidder is eligible to bid for the procurement of goods, if it complies with the eligibility requirements prescribed for the competitive bidding, within the period stated in the invitation to bid. Procuring entities and the bidders, manufacturers, suppliers or distributors are required to observe the highest standard of ethics during the procurement and execution of contract. The bidders shall be required to submit a declaration that they do not suffer from ineligibility for corrupt, fraudulent, collusive and coercive practices.

Eligible and Qualified Suppliers

6.2 Contract for supply of goods is to be placed on a supplier who is eligible to receive the contract, and, also capable, i.e. qualified in all respects to 'deliver the goods'. The supplier is required to fulfill and follow all applicable rules, regulations and conditions to transact business with Government and should be technically capable and financially sound to deliver the required goods. There are thus two basic criteria to be fulfilled by the supplier to receive a Government contract – Eligibility Criteria and Qualification Criteria. The suppliers, with whom Government transactions have been banned or suspended due to any reason including corrupt and fraudulent practices adopted by them will, not be eligible to receive Government contract.

6.3 If a purchasing department engages a consultant to prepare a project report, that consultant will not be eligible to quote against the tender enquiry subsequently floated by that department for purchase of goods for that project.

Basic Guidelines for Registration of Suppliers

6.4 The State Purchase Organisation will prepare and maintain a Register of Approved Suppliers (Annexure-A to this chapter) showing therein item-wise lists of eligible and qualified (capable) suppliers of goods commonly required for Government use. Such approved suppliers will be known as 'Registered Suppliers'. Departments may utilise the services of these registered suppliers as and when necessary. Such registered suppliers are *prima facie* eligible for consideration for procurement of goods through 'Limited Tender Enquiry'. They are also ordinarily exempted from furnishing earnest money deposit/bid security with their tenders. Credentials, manufacturing capability, quality control systems, past performance (for the goods in question), facility for after-sales service, financial background etc. of the supplier(s) should be carefully verified before registration.

Eligibility for Registration

6.5 Any firm/company, situated in India or abroad, who is in the business of manufacturing, stocking or marketing of goods shall be eligible for registration. Where registration is granted based on partly outsourced arrangements / agreements, it shall be the responsibility of the registered unit, to keep such arrangements / agreements renewed/alive at all times, to keep their registration valid for the period for which, it has been granted. Any failure in this regard may make the registration null and void/ineffective retrospectively, from any such dates, which the registering authority considers appropriate. A firm/company, against whom any punitive action has been taken, shall not be eligible for re-registration for a period of 3 (three) years, or as prescribed. Registration requests may not be entertained from such firms/companies, stake holders of

whom have any interest in deregistered / banned firms/companies.

6.6 The supplier(s) will be registered for a fixed period of 3 (three) years, or as prescribed. At the end of this period, the registered supplier(s), who are willing to continue with registration, are to apply afresh for renewal of registration. New supplier(s) may also be considered for registration at any point of time, provided they fulfill all the required conditions. Performance and conduct of every registered supplier is to be observed by the concerned department. The registered supplier(s) are liable to be removed from the list of approved suppliers, if they fail to abide by the terms and conditions of the registration.

Registration of Firms

6.7 Suppliers of goods to be registered shall be in the following broad categories-

(1) Manufacturers, who supply indigenous items.

(2) Authorised agents/distributors of such manufacturers, who market their products only through their agents.

(3) Foreign manufacturers with/without their accredited agents in India.

(4) Stockist of imported spares or other specified items.

(5) Supplier of imported goods as are having regular arrangement with foreign manufacturers.

Authorities competent to grant registration

6.8 Government shall notify the authorities competent to deal with the applications and grant registrations, along with their jurisdictions. The Appellate Authority shall be at least one level above the Registering authority or as designated by Government. The State Purchase Organisation shall issue guidelines containing all

relevant details to enable the interested firms/companies to apply for registration.

Application for Registration

6.9 Application for registration in the prescribed form (Annexure-B to this chapter) complete in all respects and accompanied with the registration fee as prescribed and necessary documents shall be submitted to the Registering authority. Registration shall be granted to the firms/companies, who fulfill all the specified requirements. Registration certificates shall be issued to the firms/companies with the approval of competent authority. The fee can be paid by DD or in cash directly. Alternatively, application forms may either be typed or downloaded from the web site of State Purchase Organisation. The application fee with taxes will be payable in such cases also.

Note : The fee may also be paid through electronic mode of payment, if so stipulated in the Form of Application for Registration.

Procedure for Registration

6.10 The application received in prescribed form, should be scrutinised thoroughly. If details given by the applicant are found incomplete or evasive, application should be returned straightway by assigning reasons. Confidential enquiries about the financial status, business capacity, relation with foreign firms/companies, etc., shall be made through Bank, Police, Revenue Authorities and through other State Governments or Local Bodies. If results of the enquiries are satisfactory, the applicant's name may be registered.

In case of firms/companies who are registered with DGS&D and are borne on their current list, enquiries through Bank, etc., may not be necessary. A reference to DGS&D to ascertain whether the applicant is borne on their current list shall be sufficient.

6.11 When the registration is decided, necessary entries shall be

made in the Register of Approved Suppliers and a Certificate of Registration in the prescribed form (Annexure-C to this chapter) issued to the applicant. Normally, the procedure for registration should be completed within 3 (three) months.

Lists of Approved Firms/Companies

6.12 List of firms/companies registered during each quarter shall be circulated to all Heads of departments by State Purchase Organisation. In addition, the name of each firm/company as soon as it is registered should be communicated to the departments concerned. The updated list of registered firms/companies shall be uploaded on website of State Purchase Organisation and updated as a continuous exercise.

Communication of Deficiencies to Firms/Companies

6.13 In cases where the firm/company is not considered capable and registration cannot be granted, concerned authority shall communicate the deficiencies and shortcomings direct to the firm/company under intimation to the Appellate Authority. Where request for re-verification and review is made by the firm/company, along with any fee as prescribed and within the period prescribed by State Purchase Organisation, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as fresh application and registration fee charged accordingly.

Renewal and Additional Registration Applications

6.14 All applications for Renewal or Additional Registration, as the case may be, shall be dealt with as in the case of initial registration on receipt with the prescribed processing fee. The application for renewal will be accepted without penalty fee till the last day of validity, and with penalty fee as prescribed up to 01(one) year thereafter. The application should be supported by the prescribed fee and necessary tax

clearance certificates. The procedure and level of authority shall be same as that of initial registration. A certificate of renewal of registration in the prescribed form (Annexure-D to this chapter) shall be issued to the applicant.

Cancellation of Registration

6.15 In case of violation of terms and conditions of registration, the registration of the firm/company may be cancelled by giving prior notice. A registered firm/company is liable to be removed from the list of approved suppliers, when

(1) it fails to abide by the terms and conditions under which the registration has been given;

(2) it makes any false declaration to State Purchase Organisation /department;

(3) it supplies goods of inferior quality or uninspected goods ;

(4) it renders services (including after sales services and maintenance services) of quality inferior to the contracted ones ;

(5) it fails to execute a contract or fails to execute it satisfactorily;

(6) the required technical/operational staff or equipment are no longer available with the firm/company or there is change in its production/service line affecting its performance adversely;

(7) it is declared bankrupt or insolvent;

(8) it fails to submit the required documents / information for review of registration, where required;

(9) it adopts unethical business practices, not acceptable to Government, and;

(10) any other ground which, in the opinion of the registering

authority, is not in public interest.

6.16 Firms/companies whose names have been removed from the list of approved contractors for any of the above reasons, may be allowed to re-register after 3 (three) years, or as prescribed, if an assurance is forthcoming that the failure will not be repeated.

Suspension and Banning of Business with Firms/Companies

6.17 Business dealings with a firm/company, whether it is registered or not registered, may be ordered to be suspended or banned, in public interest by the competent authority.

Grounds for Suspension

6.18 Suspension of business dealings may be ordered where pending full enquiry into the allegation, it is considered not desirable that business with the firm/company should continue. Such an order may be passed;

(1) If the firm/company is suspected to be of doubtful loyalty to India.

(2) If the Central Bureau of Investigation (CBI) or any other investigating agency recommends such a course in respect of a case under investigation and

(3) If *prima facie* a case is made out that the firm/company is guilty of an offence involving moral turpitude in relation to business dealings which, if established, would result in business dealings with it being banned.

Grounds for Banning

6.19 The grounds on which banning may be ordered are;

(1) If security considerations including question of loyalty to the State so warrant.

(2) If the proprietor of the firm/company, its employee, partner or representative is convicted by a court of law following

prosecution for offences involving moral turpitude in relation to the business dealings.

(3) If there is strong justification for believing that the proprietor or employee or representative of the firm/company has been guilty of malpractice such as bribery, corruption, fraud, substitution of tenders, interpolation, misrepresentation, evasion or habitual default in payment of any tax levied by law etc.

(4) If the firm/company continuously refuses to return Government dues without showing adequate cause and Government is satisfied that this is not due to reasonable dispute which would attract proceeding in arbitration or court of law, and

(5) If the firm/company employs a Government servant, who has been dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt Government servants.

Blacklisting of Firms/Companies

6.20 In accordance with the provisions in the Standardised Code of Blacklisting prescribed by the Government of India which is adopted on a reciprocal basis by State Government, Government can impose on a firm/company penalties such as Blacklisting, Banning and Suspension of Business, and Removal from the list of approved suppliers according to the magnitude of the irregular performance of their contracts. Such orders will be issued by State Purchase Organisation on the recommendations of the Purchase Officers. The Purchase Officers should bring to the notice of the State Purchase Organisation, cases of default, supply of defective

materials, irregular supply and all cases of breach of the terms of contract. A detailed report explaining the nature and extent of default of breach should be sent in each such case. A show cause notice shall be served to the firm/company before final orders are issued. The list of firms/copanies blacklisted / banned shall be displayed on the website of State Purchase Organisation.

Compulsory Enlistment of Indian Agents

6.21 As per the Compulsory Enlistment Scheme of the Department of Expenditure, Ministry of Finance, Government of India, it is compulsory for Indian agents who desire to quote directly on behalf of their foreign manufacturers/principals, to get themselves enlisted with the Department of Expenditure, through the Central Purchase Organisation (DGS&D).

The compulsory enlistment of Indian Agents under the scheme of Ministry of Finance, Government of India is simpler and differs from the registration of Indian Agents with the Central Purchase Organisation (DGS&D). Such firms/companies do not enjoy the same status as that of DGS&D registered suppliers.

The registration of the foreign manufacturer is not a must for enlisting the Indian Agent under this scheme. No Inspection Report in respect of the foreign manufacturer/principal is necessary.

ANNEXURE -A

FORM OF REGISTER OF APPROVED SUPPLIERS

(Ref. para 6.4)

Serial No.	**:**
Date of application	**:**
Registration No.	**:**
Date of receipt of application	**:**
Whether Manufacturer, Stockist, Agent, Others	**:**
Full Address	**:**
Telephone/Fax No.	**:**
E mail address	**:**
Website address	**:**

Final status***** (Confidential)

.....

.....

Stores handled Group, sub-group and item no(s):

(*****) Status of a Registered Supplier at a particular point of time.

Person(s) authorised to enter into contracts and sign agreements

1. Name and Designation

.....

.....

2. Name and Designation

.....

.....

3. Name and Designation

.....

.....

Authorised Officer of the Procuring Entity,

…….. department / seal

Renewal of Registration

Year or Period	Date of Renewal	Initials	Year or Period	Date of Renewal	Initials
Change of Address	Orders Placed (Number and Date of Order and Name of Materials				

Details of Defaults, Punishments, etc. (Nature of default or punishment and Number and date of communication)

Remarks

Authorised Officer of the Procuring Entity,

…….. department / seal

ANNEXURE- B

FORM OF APPLICATION FOR REGISTRATION OF FIRMS/COMPANIES AS APPROVED SUPPLIERS

(Ref para 6.9)

Note: (1) Unless complete and definite answers are given to the questions below, the application is liable to be ignored.

(2) Separate sheets may be used where the space provided is not sufficient.

1. Name of firm/company (in block letters)

2. (a) Address - Head Office –

Branches -

(b) Name and address of allied or associated firms/companies

3. e-mail address (if any)

4. Website address

5. (a) Date of commencement of business

(b) Working capital

6. Is your firm/company registered under

(a) The Indian Companies Act, 1956 / 2013

(b) The Indian Partnership Act, 1932

(c) Any Act-If not who are the owners ?

(Please give full address – see also declaration below)

(d) The Indian Factories Act, 1948

*Replies to questions at 6 (a), (b) and (d) must be substantiated by .

(a) Copy of Memorandum of Association/Articles of Association and Certificate of Incorporation.

(b) Statement in Register of Firms showing names of partners and copy of Partnership Deed (Attested copy)

(c) Registration number and date

7. Are you a manufacturer? If so, please give .

(a) Details of stores manufactured, specifying each item separately

(b) Full address of factory or workshop owned by you (with documentary proof of ownership)

8. Are you a manufacturer's agent? If so, please give

(a) Name and address of each manufacturer

(b) Stores manufactured by each

(c) Letter of authority (in original) appointing you as Agent, which must indicate whether the manufacturers will also deal with Government direct or only through your agency.

9. Are you a stockist only? If so, please give

(a) Items of stores stocked

(b) The quantity and value of stocks held at present and of which you are the owner

(c) Addresses of godown (s) where stocked

10. Names and permanent addresses of the Proprietors or Partners or Directors, etc.

11. Name and full address of your bankers stating the name in which the account stands.

12. Are you on the list of approved contractors of the following? If so, give details of Registration

(a) Director General of Supplies and Disposals

(b) Any State Government

(c) Any other authority

13. Did you apply for registration with this department before? If so, with what result.

14. Has anyone in the Uttar Pradesh Government Service any interest in the business, other than being a share-holder in the case of joint stock companies?

15. Give details of any contracts executed during the last 2 (two) years for any Government department.
16. Give details of the stores against which your name is to be registered (give the list of stores in triplicate).
17. Have you remitted the prescribed registration fee? If so, give amount and date of remittance.
18. Were you or any other persons interested in the business removed/black-listed from the list of approved suppliers of this department or any other department?
19. Annual turnover/net worth for last 3 (three) years (year wise) duly supported by relevant balance sheets.
20. Have you been paying Income tax and Sales tax/VAT regularly? If so, attach certificates to that effect from the authorities concerned.
21. Details of after sales-services for providing technical support to the clients.
22. Entity responsible for legal/litigation matters concerned for the item etc.
23. Name and designation, contact no. and addresses/e-mail ID of the person(s) signing this application.

DECLARATION BY THE APPLICANT

{vide sl. no. 6 (c)}

We.....

(name of *Partners/Proprietors/or Directors) do hereby declare that the entries made in this application form are True to the best of our knowledge and also that we shall be bound by the acts of our duly, constituted Attorney Mr. ..... who has signed this application and of any other person who in future may be

appointed by us in his stead to carry on the business of the concern whether an intimation of such change is given to you or not.

We have read the conditions of registration and have accepted them.

Signature and designations of

*Partners/Proprietors/or Directors

(Signature(s))

Name of Signatory(ies) signing this application

Seal

Place :

Date :

Note: (1) All subsequent changes in constitution of a firm/company, affecting the accuracy of the answers now given should be promptly communicated to the Commissioner and Director of Industries, Store Purchase Section, Kanpur/Procuring entity, as the case may be.

Note: (2) All annexures/enclosures supporting the application should be authenticated under the signature of the applicant in ink with seal of the firm/company.

* Strike out items not applicable

ANNEXURE -C

CERTIFICATE OF REGISTRATION

……. (name of department),

GOVERNMENT OF UTTAR PRADESH

(Ref. para 6.11)

Registration No.....

Messrs.....

..... is/are registered as approved suppliers to the Government of Uttar Pradesh in respect of the Stores specified below. The registration is subject to the conditions stipulated overleaf.

The registration is valid till ..... unless terminated earlier.

Place :

Date : Signature and Name of the Officer

…….. department / seal

CONDITIONS OF REGISTRATION
(to be printed on reverse side)

1. The registration should be renewed before the validity expires. This certificate should be returned with the application for renewal.
2. Application for renewal will be accepted without penalty till the last date of validity mentioned obverse, and with penalty fee as prescribed up to 01 (one) year thereafter. The application should be supported by the prescribed fee and necessary tax clearance certificates.
3. Any change of address should be notified promptly.
4. The registration No. should be quoted in all tenders/quotations submitted by the firm.

They should also certify that they are registered for the articles tendered for.

5. Registration may be cancelled for any of the following reasons:

   (a) Failure to renew registration within the prescribed time.

   (b) Failure to observe the instructions given in the tender notices including schedule.

   (c) Failure to quote in response to invitations to tender on 4 (four) successive occasions.

   (d) Submission of 4 (four) successive quotations all of which are 50% or more above the quotation ultimately accepted.

   (e) Failure to secure a contract during the first 3 (three) year period after registration.

   (f) Failure to perform a contract or contrac4ts satisfactorily and in accordance with the obligations of the contract.

   (g) Any grounds, which in the opinion of the Government render the retention of the contractor's name on the list of approved contactors undesirable in public interest.

ANNEXURE-D

CERTIFICATE OF RENEWAL OF REGISTRATION

……. (name of department),

GOVERNMENT OF UTTAR PRADESH

(Ref. para 6.14)

Registration No.....

The registration of M/s ..... (Registration No. ..... dated.....) as approved suppliers to the Government of Uttar Pradesh is renewed for the period from ..... to ..... subject to the conditions of registration specified in the original certificate.

The new number assigned to you is …….....

Place :

Date:

Signature and Name of the Officer
…….. department / seal

To

M/s …….....

.....

Notes:

1. New number assigned to you should be quoted as the Registration Number in all tenders submitted by you to the Officers of the Uttar Pradesh Government.
2. Application for further renewal should be made before the validity of this renewal expires, accompanied by the prescribed fee and documents.
3. Failure to renew the Registration within a period of 01 (one) year from date of expiry will entail automatic cancellation of the registration.

CHAPTER - 7

FORECAST, INDENTS, SCRUTINY OF INDENTS AND FINANCIAL ARRANGEMENTS

7.1 Although it is better to have more goods on hand than what is required, it would amount to poor use of the resources of the organisation. Too little quantity is normally a mistake, quantity exceeding the actual needs would amount to waste of material and money. How much to buy, therefore, becomes an important question. Unless the goods are of the required quality they would not meet the needs of the organisation satisfactorily. The price factor should be considered along with the question of dependability of the supplier. Unless the goods purchased are delivered at the right time they would be of little value to the purchaser.

Forecast of Requirements

7.2 A procuring officer, who has to purchase goods for public service should estimate the requirements for a year so far as they can be foreseen. In preparing the estimates, the average consumption of past 3 (three) years, as also the revised estimates of the current year, should invariably be kept in sight; not as something that could conveniently be repeated but as a basis for an intelligent anticipation which takes into account any noticeable tendency for the consumption/requirements to rise or decline, any abnormal features during the past year, any recognisable regularity in the pitch of the consumption and any special features known to be certain or likely to arise during next year.

7.3 As far as possible, a procuring officer should lay in sufficient stock during the cheapest season. When necessary, one should get advice about the best time for making purchases and assistance in obtaining tenders from other Government departments who are in close touch with the market for the articles required and know

the usual course of their price. For example, it is usually advantageous to buy food grains required for rations just after the harvest and the Food and Civil Supplies Department is likely to be able to give useful advice and assistance in regard to such purchases. Articles which are likely to depreciate or deteriorate during storage should not, however, be bought long in advance of requirements. It should also be remembered that the purchase of any article in advance of requirements involves the locking up of Government money and is, therefore, not desirable unless it is reasonably likely to prove advantageous in regard to price.

Ascertainment of Surplus Stores

7.4 The surplus stock of articles, if any, available with other Government departments should first be utilised, irrespective of the cost at which it is available. The following instructions should be observed in regard to the utilisation of such surplus stores in the departments:

(1) A list of surplus articles should be circulated to other officers of the parent department and also to other departments likely to require the surplus articles to ascertain if these can be utilised by any of them. The condition, book value and the depreciated value of each of the articles in the case of commercial departments should also be indicated in the list (also refer Appendix IX of Financial Handbook Vol. V Part I)

(2) Every Head of Department should see from the list received under sub para (1) above, whether the articles available with the other departments can be utilised in the department, before going for procurement of such articles. Even in cases where no list has been received covering the

particular articles required by the department, enquiries should be made from the Heads of departments with whom such stores may be available ordinarily.

(3) When proposals are submitted to Government or any other competent authority for according sanction to the purchase of any stores it should invariably be stated whether action was taken with reference to sub para (2) above and if so, with what result.

Preparation of Indents

7.5 After the list of articles required for the year is ready, an annual indent of goods (Annexure to this chapter) should be prepared in accordance with the instructions in this regard. The indent should show the approximate cost of articles to be purchased including incidental expenses and should be sanctioned by competent authority.

7.6 Indents to be placed to State Purchase Organisation or Head of department/other authority, shall be prepared and submitted (in triplicate) in the standard Indent Form. It is the responsibility of the indenter to ensure that the indents submitted are complete in all respect viz.

(1) Description of stores should be as per latest amendments of BIS specification and BIS No. with verity or grade indicated clearly in the indent. In case, the indenter desires to purchase goods bearing ISI mark the same should be clearly specified and a photo copy of the BIS booklet attached with it.

(2) If BIS specification is not there, then a general specification should be drawn and the name of the company must be indicated from which the specification is drawn. Indenters should not mention the exact specification of the catalogue of any private firm/company.

(3) If DGS&D/State Purchase Organisation rate contracts are there for the particular item with the same specification, it should be clearly mentioned.

(4) All dimensions must be in metric system only.

(5) Any other special conditions to be incorporated in the Tender Enquiry such as installation of the equipment/machinery, demonstration and training, requirement of after sales service and spares should be clearly indicated.

7.7 All other relevant information asked in indent form – like drawings, quality, exact quantity, tender sample wherever necessary, name of the consignee, list of likely suppliers, estimated cost, and delivery period etc. must be mentioned specifically.

Indent for Procurement of Imported Goods

7.8 In Case of Indent for the purchase of imported goods, the indenter should specify the availability of the Import License, so that State Purchase Organisation /Head of Department/other authority can float Tender Enquiry accordingly. **In case of any assistance for obtaining Import license or to know the existing policy and procedure, office of the Director General of Foreign Trade, Government of India should be consulted**.

Scrutiny of Indent

7.9 (1) All Indents received in the office of State Purchase Organisation /Head of Department/other authority shall be promptly scrutinised, particularly with regard to points such as availability of funds, realistic delivery period, and availability of import license where necessary, Proprietary Certificate if necessary, specifications, estimated cost etc. or any other deficiencies requiring clarifications in the absence of which further procurement action cannot be taken. It should be ensured that the indents passed on to the Purchase Section

for procurement actions are complete in all respect. Simultaneously, the concerned indenter should also be informed about the allocation of indent number.

(2) In case where a reference has to be made to the Indenter for provision of additional funds, Import license, relaxation in specifications etc., adequate time should be given to him for a reply, making it known to him that if he fails to reply by the targeted date his indent is liable to be treated as cancelled. Effective date of the Indent will be the date of compliance by indenter.

Scrutiny of Indent by Purchase Section

7.10 The Purchase officer is expected to complete the following procedure for processing the indent and finalising the tender enquiry.

(1) Scrutiny of indent received specifically with reference to the specification, reasonability of the delivery period and estimated cost etc.

(2) Bulking of indents received from the different indenters for the same item of the same specifications.

(3) Checking the possibility of Repeat Order.

Financial Arrangements

7.11 It is the duty of each purchase officer to satisfy himself that there is valid administrative sanction for effecting the procurement of a particular item and that funds are available for the purpose. (See para 3.7 of Chapter 3)

7.12 Administrative sanction for a project in which the component items and their estimated cost are listed out in detail will be taken as equivalent to administrative sanction for the purchase of components.

7.13 While issuing administrative sanctions, mention should not be made of make, specifications, rate contracts and such other details relating to the stores, the purchase of which is being sanctioned.

ANNEXURE

FORM OF INDENT FOR STORES

(Ref. para 7.5)

Department	**Information**
Name of the Indenting Officer with Address and Telephone Number	
Indent No & Date	
Name of the consignee	
Address to which stores indented are to be consigned (nearest Destination should be mentioned)	
Articles with full description and accurate specification, etc.	
If ISI Marked, give BIS Number	
Quantity to be purchased	
Unit	
Approximate value	
Delivery Period	
Inspecting Agency	
Whether Samples required (Yes/No)	

Whether erection /commissioning required	
Whether annual maintenance contract required	
Details of last purchase Date: Quantity: Price: Specification: Name and Address of last supplier: Place of the delivery: Whether supply was made within time and satisfactorily:	
Has the required funds been provided for in the budget for the year?	
If funds not budgeted, give details of sanction for expenditure for the purchase	
Sanction order details	
Any other special instruction/remarks	

I hereby certify that the purchase of the Stores included in this indent is within my administrative powers and has been sanctioned by competent authority vide sanction order noted in the information column of the indent.

Place :
Date:

Signature
Designation of Indenting Officer

CHAPTER - 8

METHODS OF PROCUREMENT

Introduction

8.1 The procuring entity/competent authority shall decide the appropriate mode of procurement, depending on the nature of the goods, the quantity and value involved and the period of supply. In deciding to any of the alternative modes of procurement, the procuring entity must ensure that the method chosen promotes economy and efficiency and that the most advantageous price for Government is obtained.

8.2 The identification of mode of procurement is sometimes dependent on the supply market. The procuring unit or office should, therefore, study the supply market to determine the availability of goods. The goods that are universally available should generally be procured through public bidding.

Goods that are available seasonally, or those that are to be manufactured specially for the procuring entity only upon its order, would require more intensive planning in terms of timeliness for procurement, taking into consideration of manufacturing lead time.

8.3 Demands of goods shall not be divided into smaller quantities for making piece meal purchases for the sole purpose of avoiding the necessity of obtaining the sanction of higher authority required with reference to the estimated value of total demand.

Methods of Procurement

8.4 Subject to the provisions of these rules, a procuring entity may procure the goods by means of any of the following methods-

(1) Advertised Tender Enquiry (Open Competitive Bidding);

(2) Limited Tender (Limited Competitive Bidding);

(3) Two-stage Bidding;

(4) Single Source Procurement;

(5) Electronic Reverse Auctions;

(6) E-procurement;

(7) Request for Quotations;

(8) Spot Purchase;

(9) Running Contract/Rate Contract;

(10) Any other method of procurement notified by Government satisfying the general principles of procurement and which Government considers necessary in public interest. This may include procurement through participation in auction process conducted by departments / organisations of Government of India or other State Governments.

Advertised Tender Enquiry (Open competitive bidding)

8.5 (1) **When to use this method**

(1) Open Competitive Bidding shall be the most preferred method of procurement to be followed. Where the procuring entity chooses a method of procurement other than the open competitive bidding, it shall record the reasons and circumstances thereof.

(2) Open competitive bidding may also be followed in case of two stage bidding, running contract and rate contract.

(3) The procuring entity may follow the pre-qualification procedure or registration / empanelment procedure and invite bids from pre-qualified or registered / empanelled bidders only through this method.

(2) **Procedure for open competitive bidding**

(1) The detailed general process of procurement of goods, described in chapter-13 shall be followed as such in open competitive bidding.

(2) The procuring entity shall invite bids by publishing an invitation to bid on the State Public Procurement Portal and by such other modes as specified in chapter-13. In order to promote domestic industry, normally the procedure of National Competitive Bidding (NCB) shall be adopted for open competitive bidding. The procedure of International Competitive Bidding (ICB) may be adopted if there is such a condition of adopting ICB for certain procurements under an obligation of an agreement with international financing institution, or the subject matter of procurement is such that in the opinion of the procuring entity it will be in the public interest to adopt ICB.

Limited Tender (Limited competitive bidding)

8.6 (1) **Conditions for adopting this method**

(1) A procuring entity may choose the method of limited competitive bidding when estimated value of the goods to be procured is up to Rs. 25 (twenty five) lac.

(2) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rs. 25 (twenty five) lac, in the following circumstances.

(a) The competent authority in the department certifies that the demand is urgent and should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

(b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.

(c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped, is remote.

(2) **Procedure of Limited Competitive Bidding**

(1) Copies of the bidding document should be sent directly by speed post/registered post/courier/e-mail to firms/companies which are borne on the list of registered suppliers for the goods in question. The number of supplier firms/companies in Limited Tender Enquiry should be more than 3 (three). Further, web based publicity should also be given for limited tenders. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis.

(2) In case registered bidders in sufficient numbers are not available, invitation to bid should be sent by writing directly to an adequate number of manufacturers or authorised dealers, who can supply the subject matter of procurement selected in a non-discriminatory manner to ensure effective competition.

(3) Sufficient time should be allowed for submission of bids in limited tender enquiry cases. A minimum period of 7 (seven) days, 3 (three) days in case of emergency, shall be given to the firms/companies to offer their bids.

(4) Bid security shall not be obtained in case of limited competitive bidding, but performance security deposit shall be obtained from the successful bidder.

(5) The remaining procedure of open competitive bidding shall apply *mutatis mutandis* in this method of procurement including preparation of Notice Inviting Bids (NIB) and bidding documents.

Two stage bidding

8.7 The two stage bidding procedure should be used in large and complex contracts where technically unequal proposals are likely to

be encountered or where the competent authority is aware of its options in the market but, for a given set of performance requirements, there are two or more equally acceptable technical solutions available.

(1) **Conditions for adopting this method**

A procuring entity may choose to procure the subject matter of procurement by the method of two stage bidding if-

(1) it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or

(2) the character of the subject matter of procurement is subject to such rapid technological advances and market fluctuations to make open competitive bidding unfeasible; or

(3) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or

(4) the bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement; or

(5) open tendering was engaged in but no tenders were presented or the procurement was cancelled by the procuring entity and where, in the judgment of the procuring entity, engaging in new open-tendering proceedings or a procurement method under these rules would be unlikely to result in a procurement contract.

(2) **Procedure of two stage bidding**

(1) In the first stage of the bidding process, the procuring entity shall invite proposals containing the professional and technical competence and qualifications of bidders regarding the subject matter of procurement and contractual terms and conditions of the proposed procurement without a bid price;

(2) All first stage bids, which are otherwise eligible, shall be evaluated in accordance with the procedure laid down in these rules through an appropriate committee constituted by the procuring entity;

(3) The committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions;

(4) In revising the technical design, stipulations, relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or delete any specification of the subject matter of procurement or criterion for evaluation;

(5) Once the technical specifications and evaluation criteria are finalised, in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices and detailed technical bid in response to a revised set of terms and conditions of the procurement in 2 (two) separate sealed envelops upto a specified deadline after which no bids shall be received.

(6) Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to changes in the specifications, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being

penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification

(7) The committee constituted by the procuring entity/competent authority shall proceed with the bid evaluation, post qualification, award of contract and contract signing in accordance with the procedure and timeline prescribed for competitive bidding.

Single Source Procurement

8.8 (1) **Conditions for adopting this method**

Procurement from a single source may be resorted to only in unavoidable situations. Purchase through this method may be adopted in the following circumstances.

(1) The subject matter of procurement is available only from a particular prospective bidder, or a particular prospective bidder has exclusive rights in respect of the subject matter of procurement, such that no reasonable alternative or substitute source exists, and the use of any other procurement method would therefore not be possible. For this purpose the Administrative department concerned shall constitute a committee of 3 (three) experts consisting of one technical representative of the procuring entity, one technical representative of Government organisation dealing with similar procurement and one representative from a reputed academic or research institution or a non commercial institution having expertise in such line to examine and declare that the goods are available from a single source; or

(2) owing to a sudden unforeseen event, there is an extremely urgent need for the subject matter of procurement, and engaging in any other method of procurement would be impractical; or

(3) the procuring entity, having procured goods, equipment, technology or services from a bidder, determines that additional

supplies or services shall be procured from such bidder for reasons of standardisation or because of the need for compatibility with existing goods, equipment, technology or services; or

(4) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of national security interests; or

(5) mandatory procurement from any category of bidders or purchase preference provided by Government on any of the following grounds -

(a) the promotion of domestic industry,

(b) socio-economic policy of Government,

(c) any other consideration in public interest in furtherance of a duly notified policy of Government.

(6) subject matter of procurement is of artistic nature, up to the limit of delegation of financial power; or

(7) subject matter of procurement is of such nature, as it requires the procuring entity to maintain confidentiality, like printing of examination papers.

(2) **Procedure of single source procurement**

The procedure for single source procurement shall include the following

(1) the procuring entity shall solicit a bid from the single prospective bidder issuing suitable tender document, containing required terms and conditions;

(2) the procuring entity may engage in negotiations in good faith with the bidder;

(3) bid security/earnest money deposit shall not be obtained in case of single tender inquiry.

Note: A certificate in the following form should be provided before procuring the goods from a single source.

(1) The indented goods are manufactured by M/s .....

(2) No other make or model is acceptable for the following reasons :

.....

.....

.....

(3) Concurrence of finance wing to the proposal vide : .....

(4) Approval of the competent authority vide .....

.....

.....

(Signature with date and designation
of the procuring officer)

Electronic Reverse Auction

8.9 Government may at appropriate time decide to adopt this method of procurement of goods. The salient features of this method are given in the Annexure to this chapter.

E-procurement

8.10 The salient features of this method are given in the Chapter 15. Government may, by notification, declare adoption of electronic procurement as compulsory for different stages and types of procurement, and on such declaration, every requirement for written communication shall be deemed to have been satisfied if it were done by electronic means.

Request for quotations

8.11 (1) **Conditions for adopting this method**

A procuring entity may choose to procure a subject matter of procurement of the value which is less than such monetary value as may be prescribed by this method in the following situations :

(1) procurement of readily available commercial off-the-shelf goods that are not specially produced to the particular description of the goods required by the procuring entity and for which there is an established market; or

(2) procurement of any goods which are urgently required for maintenance or emergency repairs.

(2) **Procedure of request for quotations**

(1) Quotations (in sealed envelope) shall be requested from as many potential bidders as practicable, subject to a minimum of 3 (three);

(2) Each bidder from whom a quotation is requested shall be informed whether any elements other than the charges for the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price.

(3) Each bidder shall be permitted to give only one quotation.

(4) The successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations. It should also be nsured that the price is reasonable.

Note: In case of purchases of the spare parts of motor vehicles, machinery and equipment of the particular make, quotations shall be invited from the authorised dealers and original equipment suppliers.

Spot Purchase

8.12 (1) **Conditions for adopting this method**

A procuring entity may choose to procure a subject matter of procurement of the value which is less than such monetary value as may be prescribed by this method in the following situations:

(1) procurement of readily available commercial off-the-shelf goods that are not specially produced to the particular description of the goods required by the procuring entity and for which there is an established market; or

(2) procurement of any goods which are urgently required for maintenance or emergency repairs.

(2) **Procedure of spot purchase**

A procuring entity may procure the subject matter of procurement specified in sub-para (1) through a purchase committee comprising minimum 3 (three) members including at least a gazetted officer and an accounts person of appropriate level within the procuring entity. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under :

'Certified that we _____, members of the spot purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specifications and quality, priced at the prevailing market rate and the supplier

recommended is reliable and competent to supply the goods in question.'

....

.....

(3) **Procurement without inviting quotations**

Procurement of a subject matter of procurement of the value which is less than such monetary value as may be prescribed may be made without inviting quotations or bids on the basis of a certificate to be recorded in the following format :

'I ..... am personally satisfied that these goods are of the requisite quality and specification and have been purchased from a reliable supplier at a reasonable price.'

.....

Running Contract and Rate Contract

8.13 The detailed general process of procurement of goods, described in chapter-16 shall be followed as such in Running Contract or Rate Contract.

Purchase of Branded Item

8.14 In case, purchase of a branded item is inevitable, Head of department shall call limited tenders of selected brands after obtaining the sanction of administrative department of Government to purchase it. A detailed note, with comparative evaluation of tenders from selected brands and technical justification based on expert advice regarding the acceptance of any particular brand should invariably be prepared. It should be clearly mentioned in the note as to whether, the brand selected for purchase is manufactured in India, or not. The purchase proposal shall be sent to administrative department concerned

to be placed for consideration by a committee headed by the Principal Secretary/Secretary of the department and a technical expert as one of the members. This procedure should be followed scrupulously.

Purchase and Price Preference in procurement

8.15 Government, by notification, may issue orders relating to purchase preference and price preference along with the conditions of their application for procurement from Micro, Small and Medium Enterprises and other industries situated in Uttar Pradesh. The Procuring Entity should check the latest instructions issued by Government in this regard.

Where necessary, purchase/price preference provisions shall be a part of notice inviting tenders (NIT).

ANNEXURE

Electronic reverse auction

(Ref. para 8.9)

1. **Conditions for adopting this method**

A procuring entity may choose to procure a subject matter of procurement by the method of electronic reverse auction, if-

(a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement; and

(b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured; and

(c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

2. **Procedure of electronic reverse auction as a stand-alone method of procurement**

(a) The procuring entity shall solicit bids by causing an invitation to the electronic reverse auction to be published in accordance with chapter-13. The invitation shall include

(1) the name and address of the procuring entity;

(2) a detailed description of the subject matter of the procurement, and the desired or required time and location for the provision of such subject matter;

(3) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the form of the contract, if any, to be signed by the parties;

(4) the criteria and procedures to be used for ascertaining the qualifications of bidders or contractors and any documentary evidence or other information that must be presented by bidders or contractors to demonstrate their qualifications;

(5) the criteria and procedure for examining bids against the description of the subject matter of the procurement;

(6) the criteria and procedure for evaluating bids, including any mathematical formula that will be used in the evaluation procedure during the auction;

(7) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes;

(8) the minimum number of bidders or contractors required to register for the auction to be held, which shall be sufficient to ensure effective competition;

(9) if any limit on the number of bidders or contractors that can be registered for the auction is imposed, the relevant maximum number and the criteria and procedure, that will be followed in selecting it;

(10) how the auction can be accessed, including appropriate information regarding connection to the auction;

(11) the deadline by which the bidders must register for the auction and the requirements for registration;

(12) the date and time of the opening of the auction and the requirements for identification of bidders at the opening of the auction;

(13) the criteria governing the closing of the auction;

(14) other rules for the conduct of the auction, including the information that will be made available to the bidders in the course of the auction, the language in which it will be made available and the conditions under which the bidders will be able to bid;

(15) references to these rules, and other laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving classified information, and the place where those laws and regulations may be found;

(16) the means by which the bidders may seek clarification of information relating to the procurement proceedings;

(17) the name, functional title and address of one or more officers or employees of the procuring entity who are authorised to communicate directly with and to receive communications directly from the bidders in connection with the procurement proceedings before and after the auction without the intervention of an intermediary;

(18) any formalities that will be required after the auction for a procurement contract to enter into force, including, where applicable, ascertainment of qualifications or responsiveness and execution of a written procurement contract;

(19) Any other requirements established by the procuring entity in conformity with these rules.

(b) The procuring entity may impose a maximum limit on the number of bidders that can be registered for the electronic reverse auction only to the extent that capacity constraints in its communications system so require, and shall select the bidders or contractors to be so registered in a non-discriminatory manner. The procuring entity shall include a statement of the reasons and circumstances upon which it relied to justify the imposition of such a maximum limit in the record.

(c) The procuring entity may decide, in the light of the circumstances of the given procurement, that the electronic reverse auction shall be preceded by an examination or evaluation of initial bids. In such case, the invitation to the auction shall, in addition to information mentioned earlier include:

(1) an invitation to present initial bids, together with instructions for preparing initial bids;

(2) the manner, place and deadline for presenting initial bids.

(d) Where the electronic reverse auction has been preceded by an examination or evaluation of initial bids, the procuring entity shall promptly after the completion of the examination or evaluation of initial bids

(1) dispatch the notice of rejection and reasons for rejection to each bidder whose initial bid was rejected;

(2) issue an invitation to the auction to each qualified bidder whose initial bid is responsive, providing all information required to participate in the auction;

(3) where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation, as relevant to the bidder to which the invitation is addressed.

3. **Electronic reverse auction as a phase preceding the award of the procurement contract**

(a) Where an electronic reverse auction is to be used as a phase preceding the award of the procurement contract in a procurement method, as appropriate, the procuring entity shall notify the bidders when first soliciting their participation in the procurement proceedings that an auction will be held, and shall provide, in addition to other information required to be included under provisions of these rules, the following information about the auction

(1) the mathematical formula that will be used in the evaluation procedure during the auction;

(2) how the auction can be accessed, including appropriate information regarding connection to the auction.

(b) Before the electronic reverse auction is held, the procuring entity shall issue an invitation to the auction to all bidders remaining in the proceedings, specifying:-

(1) the deadline by which the bidders must register for the auction and requirements for registration;

(2) the date and time of the opening of the auction and requirements for the identification of bidders at the opening of the auction;

(3) criteria governing the closing of the auction;

(4) other rules for the conduct of the auction, including the information that will be made available to the bidders during the auction and the conditions under which the bidders will be able to bid.

(c) Where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation as relevant to the bidder to which the invitation is addressed.

4. **Registration for the electronic reverse auction and the timing of the holding of the auction**

(a) Confirmation of registration for the electronic reverse auction shall be communicated promptly to each registered bidder.

(b) If the number of bidders registered for the electronic reverse auction is less than 3 (three), to ensure effective competition, the procuring entity may cancel the auction. The cancellation of the auction shall be communicated promptly to each registered bidder.

(c) The period of time between the issuance of the invitation to the electronic reverse auction and the auction shall be of minimum 7 (seven) days to allow bidders or contractors to prepare for the auction, taking into account the reasonable needs of the procuring entity.

5. **Requirements during the electronic reverse auction**

(a) The electronic reverse auction shall be based on:

(1) price, where the procurement contract is to be awarded to the lowest-priced bid; or

(2) price and other criteria specified to the bidders as applicable, where the procurement contract is to be awarded to the most advantageous bid.

(b) During the auction:

(1) all bidders shall have an equal and continuous opportunity to present their bids;

(2) there shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula provided to the bidders;

(3) each bidder must receive, instantaneously and on a continuous basis during the auction, sufficient information allowing it to determine the standing of his bid vis-à-vis other bids;

(4) There shall be no communication between the procuring entity and the bidders or among the bidders, other than as provided for in sub-paras (a) and (e).

(c) The procuring entity shall not disclose the identity of any bidder during the auction.

(d) The auction shall be closed in accordance with the criteria specified to the bidders.

(e) The procuring entity shall suspend or terminate the auction in the case of failures in its communication system that put at risk the proper conduct of the auction or for other reasons stipulated in the rules for the conduct of the auction. The procuring entity shall not disclose the identity of any bidder in the case of suspension or termination of the auction.

6. **Requirements after the electronic reverse auction**

(a) At the closure of the electronic reverse auction the lowest-priced bid or the most advantageous bid, as the case may be, shall be the successful bid.

(b) In procurement by means of an auction that was not preceded by examination or evaluation of initial bids, the procuring entity shall ascertain after the auction the responsiveness of the successful bid and the qualifications of the supplier or contractor submitting it. The procuring entity shall reject that bid if it is found to be unresponsive or if the supplier or contractor submitting it is found unqualified. Without prejudice to the right of the procuring entity to cancel the procurement, the procuring entity shall select the bid that was the next lowest-priced or next most advantageous bid at the closure of the auction, provided that the bid is ascertained to be responsive and the bidder submitting it is ascertained to be qualified.

CHAPTER -9

EARNEST MONEY DEPOSIT AND PERFORMANCE SECURITY

Earnest Money Deposit (Bid Security)

9.1 In order to safeguard against a bidder's withdrawing/altering its bid during the bid validity period in the case of tender enquiry, Earnest Money Deposit (EMD) is to be obtained from the bidders.

9.2 The bidders are required to furnish EMD along with their bids. Earnest money should ordinarily be taken for every bid for estimated value Rs. 1.00 (one) lac or more. The amount of EMD should be decided on the basis of estimated value of the goods to be purchased, which is as under -

estimated value of the goods upto Rs. 1.00 lac (Rs. One lac)	earnest money Rs. 1500 (Rs. One Thousand Five Hundred)
for each additional Rs. 1.00 lac (Rs. One lac) or a part thereof	a further amount of Rs. 1000 (Rs. One Thousand)

9.3 EMD should be incorporated as a fixed amount to be calculated as above, and not as a percentage of the estimated value of goods to be purchased.

Exemption from payment of EMD

9.4 Earnest money deposit (Bid security) will not be taken in case of procurement by Limited Tender, Request for quotations, Spot purchase and Single source procurement.

9.5 Micro and Small Enterprises and Industrial Co-operatives within State which are certified as such by the Commissioner and Director of Industries or by Deputy Commissioner, District Industries

Centre, are exempted in respect of certified items from furnishing earnest money deposit in support of tenders submitted by them. The Khadi and Village Industries Co-operative Societies within the State, registered as such with the Khadi and Village Industries Board/Khadi and Village Industries Commission on furnishing proof of such registration are also exempted from furnishing earnest money deposit.

9.6 Micro and Small Enterprises registered with the National Small Industries Corporation Limited, New Delhi (NSIC) and in respect of which competency certificates are issued by the NSIC will be exempted from furnishing earnest money deposit.

9.7 Government institutions / State Public Sector Undertakings, which manufacture and supply goods, are exempted from furnishing earnest money for tenders.

Note: Under e-procurement system the authorised exemption list shall be published in the e-procurement portal at appropriate time.

Payment of EMD

9.8 Earnest money may be accepted in the form of Account Payee Demand Draft or Fixed Deposit Receipt pledged in favour of Head of department /Head of office/other officer authorised by the Government or Banker's Cheque or a Bank Guarantee from any of the scheduled commercial banks, safeguarding the purchasers interest in all respects. A model format of Bank Guarantee for obtaining EMD is available at Annexure-A to this chapter. The tenderers should be specially instructed in the advertisement not to enclose in the envelope any Earnest Money in cash.

Note: Under e-procurement system the tender submission fees and earnest money deposit will be through modes other than

cash/DD/MO/cheque. Electronic mode of payment as defined in the tender notice will be applicable.

Validity of EMD

9.9 The EMD should remain valid for a period of 45 (forty five) days beyond the final tender validity period. This time period must be indicated in the bidding documents.

Should it become necessary to extend the validity of the bids and the bid securities, the Procuring Entity should request in writing all those who submitted bids for such extension before the expiry date thereof. Bidders shall have the right to refuse to grant such extension without forfeiting their bid securities. The bidders who refuse to grant the procuring entity's request for an extension of the validity of their bids and bid securities, will have their bid securities returned to them. They shall be deemed to have waived their right to further participate in the bidding.

Forfeiture of EMD

9.10 EMD of a tenderer will be forfeited, if the tenderer withdraws or amends his tender or impairs or derogates from the tender in any respect after expiry of the deadline for the receipt of tender but within the period of validity of his tender. Further, if the successful tenderer fails to furnish the required performance security within the specified period, his EMD will be forfeited.

Refund of EMD

9.11 EMD furnished by all unsuccessful tenderers should be returned to them without any interest whatsoever, at the earliest after expiry of the final tender validity period but not later than 30 (thirty) days after conclusion of the contract. EMD of the successful tenderer should be returned, without any interest whatsoever, after receipt of performance security from him as called for in the contract.

Performance Security (Security Deposit)

9.12 To ensure due performance of the contract, Performance Security is to be obtained from the successful bidder, who is awarded the contract. Performance Security is to be obtained from every successful bidder irrespective of his registration status, etc., for a contract value above Rs. 1.00 (one) lac. Performance Security may be furnished in the form of Fixed Deposit Receipt or Bank Guarantee from a scheduled commercial bank in an acceptable form safeguarding the purchaser's interest in all respects. A sample format of Bank Guarantee for performance security is available at Annexure-B to this chapter.

9.13 In case, Performance Security is taken in the form of Fixed Deposit Receipt, it should be pledged in favour of Head of office/ Head of department/ Other officer authorised by Government.

9.14 The Performance Security should be equivalent to 5% (five percent) of the value of the contract, rounded to the nearest multiple of hundred.

9.15 Performance Security is to be furnished by a specified date (generally within 15 (fifteen) days from the date of notification of the award/letter of acceptance) and it should remain valid for a period of 30 (thirty) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.

9.16 No security should be demanded or taken from any Government corporations, which supply goods. This provision will apply in the matter of purchase of goods from Government of India undertakings as well.

9.17 Micro and Small Enterprises and Industrial Co-operatives within State, which have been registered as such with the

Commissioner and Director of Industries, on furnishing proof of such registration are exempted from furnishing performance security against contracts for supply of goods manufactured by them.

9.18 In the matter of purchase of goods by Government departments, Micro and Small Enterprises sponsored by the NSIC and in respect of which competency certificates are issued by the NSIC, will be exempted from furnishing performance security. This will not, however apply in the matter of purchase of goods on rate or running contract basis.

9.19 The Khadi and Village Industries Co-operative Societies within the State, registered as such with the Khadi and Village Industries Board/Khadi and Village Industries Commission on furnishing proof of such registration are exempted from furnishing performance security against contracts for supply of goods manufactured by them.

9.20 No fresh performance security need be demanded from rate contract holder(s) for extended period of the rate contract originally concluded with them. The performance security obtained against the original rate contract may be considered as security for the extended period of the rate contract. In case it does not fulfill the requirement of para-9.15, the validity period should be suitably got extended or a fresh Performance Security be obtained. In all such cases a Supplemental Agreement should be entered into with the rate contract holder for the satisfactory fulfillment of the extended contract. A standard form of supplemental agreement is available at Annexure-C to this chapter.

9.21 On the request of the contractor, earnest money deposit may be treated as a part of his performance security and only the

balance amount of performance security need be called for from him. This is subject to instructions contained in para 9.15 regarding validity of performance security.

Forfeiture of Performance Security

9.22 Performance security is to be forfeited and credited to Government Account in the event of a breach of contract by the supplier, in terms of the relevant contract.

Refund of Performance Security

9.23 Performance Security should be refunded to the supplier without any interest, whatsoever, after it duly performs and completes the contract in all respects but not later than 30 (thirty) days of completion of all such obligations under the contract including warranty obligations .

Verification of the Bank Guarantees

9.24 Bank Guarantees submitted by the tenderers/suppliers as EMD/Performance Security shall be got verified immediately from the issuing Bank before acceptance. A format of letter to be addressed to Bank for verification of Bank Guarantee is available at Annexure-D to this chapter.

Custody and Monitoring of EMDs, Performance Securities and Other Instruments

9.25 Suitable mechanism for safe custody and monitoring of EMDs, Performance Securities and other Instruments should be evolved and implemented by each department. The departments shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and Performance Securities, as the case may be. Monitoring should also include a monthly review of all Bank Guarantees and other instruments expiring after 3 (three) months, along with a review of

the progress of the corresponding contracts. Extension of Bank Guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period.

ANNEXURE-A

Model Bank Guarantee Format for Furnishing EMD

(Ref. para 9.8)

Whereas …… (hereinafter called the "tenderer") has submitted their offer dated……. for the supply of ……...…(hereinafter called the "tender") against the purchaser's tender enquiry No. ……..

KNOW ALL MEN by these presents that WE …… of …… having our registered office at …… are bound unto ……. (hereinafter called the "Purchaser) in the sum of …… for which payment will and truly to be made to the said Purchaser, the Bank binds itself, its successors and assigns by these presents. Sealed with the Common Seal of the said Bank this…… day of …….20……

THE CONDITIONS OF THIS OBLIGATION ARE:

(1) If the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of this tender.

(2) If the tenderer having been notified of the acceptance of his tender by the Purchaser during the period of its validity

(a) Fails to furnish the Performance Security for the due performance of the contract.

(b) Fails or refuses to accept/execute the contract.

WE undertake to pay the Purchaser up to the above amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser

will note that the amount claimed by it is due to it owing to the occurrence of one or both the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including 45 (forty five) days after the period of tender validity and any demand in respect thereof should reach the Bank not later than the above date.

…….

(Signature of the authorised officer of the Bank)

…….

Name and designation of the officer

…….

Seal, name and address of the Bank / Branch

ANNEXURE-B

Model Bank Guarantee Format for Performance Security

(Ref. para 9.12)

To,

The Governer of Uttar Pradesh

WHEREAS ..…….....

(name and address of the supplier) (hereinafter called "the supplier") has undertaken, in pursuance of contract no……. dated ……. to supply (description of goods and services) (herein after called "the contract").

AND WHEREAS it has been stipulated by you in the said contract that the supplier shall furnish you with a bank guarantee by a scheduled commercial bank recognised by you for the sum specified therein as security for compliance with its obligations in accordance with the contract;

AND WHEREAS we have agreed to give the supplier such a bank guarantee;

NOW THEREFORE we hereby affirm that we are guarantors and responsible to you, on behalf of the supplier, up to a total of ……. (amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the supplier to be in default under the contract and without cavil or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the supplier before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract to be performed there under

or of any of the contract documents which may be made between you and the supplier shall in any way release us from any liability under this guarantee and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until the …….... day of ……..……, 20…….

…….

(Signature of the authorised officer of the Bank)

…….

Name and designation of the officer

…….

Seal, name and address of the Bank / Branch

ANNEXURE-C

Supplemental Agreement

(Ref. para 9.20)

SUPPLEMENTAL AGREEMENT executed on …… day of ….....…… between …… (hereinafter called the "the Contractor") of the one part and the Governor of Uttar Pradesh (hereinafter called "the Government") of the other part.

WHEREAS the contractor has offered as per the letter No…….dated……...to extend the period of the existing 'rate contract' for the supply of articles mentioned in the order no…….. dated…… at the same rates terms and conditions of the existing agreement executed between the aforesaid parties on the …….. (hereinafter called the "Principal Agreement") for a further period of …… from ……to ……

AND WHEREAS the Government have in their order dated …… agreed to extend the period of the Principal Agreement for a further period of …….. from …… to ……...

NOW THESE PRESENTS WITNESS AND IT IS HEREBY MUTUALLY AGREED between the Government and the Contractor to extend the period of the Principal Agreement for further period of …… from …… to …… on the same terms and conditions enumerated in the Principal Agreement.

Save as varied as aforesaid all the terms and conditions of the Principal Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the Contractor and Shri…… (here enter the name and designation) for and on behalf of the Governor of Uttar Pradesh hereinto set their hands on the date first above written.

Signed, sealed and delivered by Shri …….. for and behalf of the Contractor.

In the presence of witnesses

1……..

2……..

Signed, sealed and delivered by ……..
(here enter the designation) for and on behalf of the Governor of Uttar Pradesh

In the presence of witnesses:

1……..

2……..

ANNEXURE-D

Format of Letter to be addressed to Bank for verification of Bank Guarantee

(Ref. para 9.24)

Registered A/D

Speed Post

To,

…… (1) Bank concerned

…… (2) Head office of the Bank

Subject : Bank Guarantee – Verification of

Sir,

With reference to our Contract No. ……. dated ……placed on M/s ……..... a Bank Guarantee No. ……..... dated ……. for Rs. …… issued from …….. Bank located at …….. (Photostat copy of Bank Guarantee enclosed) has been received.

2. It is requested that the genuineness of the Bank Guarantee may be verified and intimated to the undersigned at the earliest.

Yours faithfully,

……..

Encl : As above.

CHAPTER – 10

DELIVERY PERIOD, TRANSPORTATION AND TRANSIT INSURANCE, DELAY IN SUPPLY, CANCELLATION OF CONTRACT

Introduction

10.1 The issues concerning delivery schedule including transportation and transit insurance and various aspects covering delays in supply have been discussed in this chapter.

Delivery Period

10.2 The period for delivery of the ordered goods and completion of any allied service(s) thereof (like installation and commissioning of the equipment, operators' training, etc.) are to be properly specified in the contract with definite dates and the same shall be deemed to be the essence of the contract. Expressions such as 'immediate', 'ex-stock', 'as early as possible', 'off the shelf', etc. must not be used to indicate contractual delivery period.

Terms of Delivery

10.3 The terms of delivery are decided depending on the nature of goods to be purchased, transportation facility available, location of the user, location of the prospective suppliers etc. Terms of delivery *inter alia* determine the delivery point of the ordered goods from where the purchaser is to receive / collect the goods. Terms of delivery have direct bearing on the quoted prices.

Terms of Delivery and Date of Delivery

10.4 Delivery dates in respect of contracts incorporating standard and commonly used terms of delivery shall be deemed to be as follows:

Terms of Delivery	Date of Delivery
Ex. Works	The date the supplier delivers the goods to the purchaser at its

	(supplier's) factory/premises.
FOR, station of despatch (FOR stands for Free on Rail)	The date on which the goods are placed by the supplier on rail with clear RR (Railway Receipt)
FOR, destination	The date on which the ordered goods reach the destination railway station specified in the contract.
CIP, destination (CIP stands for Carriage and Insurance paid)	The date on which the delivery is effected at the destination mentioned in the contract.
Local delivery at site	The date on which the delivery is made at the consignee's site mentioned in the contract.
FAS, port of shipment (FAS stands for Free Alongside Ship)	The date on which the supplier delivers the goods alongside the vessel at the specified port of shipment. This date is reflected in the Bill of Lading.
FOB, port of shipment (FOB stands for Free on Board)	The date on which the supplier delivers the goods on vessel's board at the specified port of shipment. This date is reflected in the Bill of Lading.
CIF, port of destination (CIF stands for Cost, Insurance and Freight)	The date on which the goods arrived at the destination port.

Note: FAS, FOB and CIF terms of delivery are applicable for goods which are directly imported from foreign countries against the subject

matter of contract and not imported already by the supplier under its own arrangement. CIP terms of delivery may be applied both for domestic as well as imported supplies.

Transportation of Imported Goods

10.5 As per the general policy of Government of India, all import contracts are to be concluded on FOB/FAS basis. In case a department desires any departure from the above policy including placement of contracts for import of foreign goods on CIF Indian Port/CIP Destination basis, prior permission is required to be obtained from Ministry of Surface Transport, Government of India.

10.6 In case of FOB/FAS contracts, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least 6 (six) weeks in advance for finalising the shipping arrangement, through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered.

10.7 If the advice for shipping arrangement is not furnished to the supplier within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the supplier may arrange for such transport on alternative carriers with the prior written consent of the purchaser.

10.8 Where the supplier is required under the contract to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the purchaser for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the supplier may arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the contract, with the prior written consent of the purchaser.

10.9 Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the purchaser was obtained), the supplier will be liable for all payments and expenses that the purchaser may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the purchaser. The supplier shall not arrange part-shipments and/or transshipment without the express/prior written consent of the purchaser.

10.10 Where the supplier is required under the contract to deliver the goods under CIF/CIP terms, no further restriction shall be placed on the choice of the ocean carrier except that the shipment shall be made by Indian flag vessel or by vessels belonging to the conference lines in which India is a member country.

Note : Before processing any case for placement of contract on FAS/FOB/ CIF/CIP basis for imported goods, the purchase organisation should check the contemporary orders of Ministry of Surface Transport (Chartered Wing), Government of India in this regard for further necessary action.

INCOTERMS

10.11 Unless otherwise specifically agreed to by the purchaser and the supplier and incorporated in the contract, the applicable rules and

regulations for transportation of goods from foreign countries will be as per the contemporary version of International Commercial Terms (Incoterms) evolved by International Chamber of Commerce, Paris. Incoterms are the official rules for worldwide interpretation about the duties, obligations, etc. of the buyer and the seller for transportation of the goods from seller's country to buyer's country. Incoterms are recognised by the United Nations Commission on International Trade Law (UNCITRAL) as the global standard for such interpretation. The purchasing department, while ordering goods for importation from foreign countries are to take note of the same.

Air Consignment

10.12 Before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed.

Insurance

10.13 Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on 'all risks' basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the over all expenditure to be incurred by the purchaser for receiving the goods at the destination.

Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser as the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the purchaser.

Note**:** Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rs. 5 (five) crore.

Dispatch Documents for Clearance/Receipt of Goods

10.14 The supplier shall send all the relevant dispatch documents well in time to the purchaser to enable the purchaser clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. The usual documents involved and the drill to be followed in general for this purpose are as follows:

(1) **For Domestic Goods**

Within 24 hours of dispatch, the supplier shall notify the purchaser, consignee, …….. (others concerned), the complete details of dispatch and also supply following documents by registered post / speed post (or as instructed in the contract):

(a) Supplier's Invoice indicating, *inter alia* description and specification of the goods, quantity, unit price, total value;

(b) Packing list;

(c) Certificate of country of origin;

(d) Insurance certificate;

(e) Railway receipt/Consignment note;

(f) Manufacturer's guarantee certificate and in-house inspection certificate;

(g) Inspection certificate issued by purchaser's inspector and

(h) Any other document(s) as and if required in terms of the contract.

(2) **For Imported Goods**

Within 24 hours of dispatch, the supplier shall notify the purchaser, consignee,…….. (others concerned), the complete details of

dispatch and also supply following documents by air mail / courier (or as instructed in the contract):

(a) Supplier's Invoice giving full details of the goods including quantity, value, etc.;

(b) Packing list;

(c) Certificate of country of origin;

(d) Manufacturer's guarantee and Inspection certificate;

(e) Inspection certificate issued by the Purchaser's Inspector;

(f) Insurance Certificate;

(g) Name of the Vessel/Carrier;

(h) Bill of Lading/Airway Bill;

(i) Port of Loading;

(j) Date of Shipment;

(k) Port of Discharge and expected date of arrival of goods and

(l) Any other document(s) as and if required in terms of the contract.

Instalment Delivery

10.15 The goods ordered in a contract to be delivered by instalments may be an 'entire' contract or a 'severable' contract as per illustrations given below:

(1) Entire Contract: Total number of units of the required goods is100.

Delivery Schedule: Delivery to commence after 30 days of placement of contract and to be completed within 4 months @ 25 units per month i.e., completion by 31.03.2016 or earlier.

(2) Severable Contract: Total number of units of the required goods is 100.

Delivery Schedule: 25 units by 31.12.2015; 25 units by 31.01.2016; 25 units by 29.02.2016; 25 units by 31.03.2016.

10.16 In the case of a severable contract, each instalment constitutes a separate contract and extension in delivery period, if needed, is to be

done for each instalment separately. If goods are accepted after expiry of the delivery date of a particular instalment without extension in delivery period being given with reservation of right to liquidated damages etc., the purchaser will not be legally entitled to claim the liquidated damages etc. Therefore, in case of severable contract, the purchaser should watch delivery position of each instalment as per the specified date for that instalment, and, whenever necessary, extend the corresponding date for the instalment in question or cancel that instalment, in which there is delay in supply.

Delay in Supplies for which Supplier is not responsible

10.17 Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty on the supplier.

(1) Cases where the manufacture of goods is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time.

(2) Where extension in delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier.

(3) Cases where the purchaser controls the entire production.

The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

Force Majeure

10.18 Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not foreseeable. Such events may include, but are not restricted to, acts of the purchaser either in its sovereign or contractual capacity,

wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, earthquake, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, and freight embargoes.

10.19 If there is delay in performance or other failures by the supplier to perform its obligation under its contract due to event of a Force Majeure, the supplier shall not be held responsible for such delays/failures.

10.20 If a Force Majeure situation arises, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof within 21 (twenty one) days of occurrence of such event. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

10.21 If the performance in whole or in part or any obligation under the contract is prevented or delayed by any reason of Force Majeure for a period exceeding 60 (sixty) days, either party may at its option terminate the contract without any claim of compensation on either side.

10.22 There may be a Force Majeure situation affecting the purchase organisation only. In such a situation the purchase organisation is to take up with the supplier on similar lines as above for further necessary action.

Delay in Supply / Non-Supply for which Supplier is responsible

10.23 The purchaser has the following options depending upon the circumstances of the case:

(1) Extend the delivery period with imposing of liquidated damages for delay and with denial clauses regarding increase

in price, taxes, duties etc. taking place during the extended period.

(2) Forfeit the performance security

(3) Cancel the contract

(4) Impose other available sanctions/penalties

Liquidated Damages

10.24 There should be a suitable provision in the terms and conditions of the contract for claiming liquidated damages of appropriate amount from the supplier to take care of delays in supplies and performance, for which the supplier is responsible. Such recovery through liquidated damages should be without prejudice to the other remedies available to the purchaser under the terms of the contract. Depending on the nature and value of the goods to be ordered and the urgency of the requirement, a specific percentage of the delivered price of the delayed goods for each week or part thereof delay, is to be incorporated in the contract terms. Generally, the percentage is 0.5% per week or part thereof. There should also be an appropriate maximum limit of such deduction, to be shown as a specific percentage of the contract value of delayed supplies/services and incorporated in the contract terms. This percentage is generally 10% (ten percent). Any lower ceiling should be clearly justified while formulating the contract.

Token Liquidated Damages

10.25 There may be situations when charging full liquidated damages may not be justified as the reasons for delay in delivery by the supplier may be largely due to circumstances well beyond his control but nevertheless these may not be considered adequate to waive off liquidated damages altogether or there may be such deficiencies in service for which quantification may not be feasible and no other remedy may be available. In such cases, at the sole discretion of the

purchaser, Token Liquidated Damages up to 10% (ten percent) of the normal liquidated damages may be imposed in consultation with finance wing of the department. Stipulations to this effect, prescribing the kind of deficiencies and scale of Token Liquidated Damages chargeable should be clearly brought out in the tender documents. This safeguard should be consistent with the provisions of Performance Security (refer para 9.12-9.15 of chapter-9).

Extension of Delivery Period

10.26 If the supplier is unable to complete the supply within the stipulated delivery period for which the supplier is responsible, supplier is required to request for extension of delivery period. If the purchaser agrees to extend the contractual delivery schedule, the same may be done by issue of an amendment to the contract with suitable denial clauses and with imposition of liquidated damages for delay. The amendment letter is to mention, *inter alia* that, in addition to imposition of liquidated damages, no extra price or additional cost for any reason whatsoever beyond the contractual cost will be paid to the supplier for the delayed supply; at the same time, if for any reason, whatsoever the cost of the goods to be supplied/services to be performed by the supplier decreases that benefit will be passed on to the purchaser. Supplier's unconditional acceptance of the amendment by a specified date is to be watched and if the supplier does not agree to accept the amendment letter, further action is to be taken against the supplier in terms of the contract. Model amendment letters for extension of contract delivery period on above lines for FOB/FAS/CIF contract and other forms of contract are given at Annexures-A and B to this chapter.

Performance Notice

10.27 A situation may arise where the supply/services has not been completed within the stipulated period due to negligence / fault of the supplier; however the supplier has not made any request for extension of delivery period but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a Performance Notice (also known as Notice-cum-Extension Letter) may be issued to the supplier by suitably extending the delivery date and by imposing liquidated damages with denial clauses etc. on identical lines as in para 10.26 above. Supplier's acceptance, etc. of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the Performance Notice will be on similar lines to the model extension letters available at Annexures-A and B to this chapter with suitable modifications as required. First two paragraphs of a model Performance Notice is given at Annexure-C to this chapter.

Dispatch of Goods after expiry of Delivery Period

10.28 As per the contract terms, the supplier is not supposed to supply the goods when there is no valid delivery period. In case the supplier makes any supply after expiry of delivery period, the purchaser/consignee can reject the supplies and inform the supplier accordingly; the purchaser shall also have the right to cancel the contract (with respect to unsupplied goods) in terms of the contract.

If, however, the purchaser / consignee requires the goods (which has been supplied after expiry of the delivery period), the purchaser may accept the goods and issue a delivery extension letter with usual Liquidated Damage clause and denial clauses, as mentioned earlier, to regularise the transaction.

Correspondence with the Supplier after Breach of Contract

10.29 The purchaser or his authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will make the contract alive. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies etc. from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract alive and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. A model communication which may be issued by the purchaser to ascertain the supply position etc. after expiry of the delivery period is given at Annexure-D to this chapter.

Cancellation of Contract for Default

10.30 The purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, terminate the contract in whole or in part;

(1) If the supplier fails to deliver any or all of the goods within the time period(s) specified in the contract, or any extension thereof granted by the purchaser; or

(2) If the supplier fails to perform any other obligation under the contract within the period specified in the contract, or any extension thereof granted by the purchaser.

10.31 In the event the purchaser terminates the contract in whole or in part, the purchaser may take recourse to any one or more of the following actions :

(1) the Performance security is to be forfeited;

(2) the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods similar to those undelivered, and the supplier shall be liable for all available actions against it in terms of the contract;

(3) however, the supplier shall continue to perform the contract to the extent not terminated.

Before cancelling the contract and taking further action, it may be desirable to obtain legal advice from the Law department of Government.

Termination of Contract for Insolvency

10.32 If the supplier becomes bankrupt or otherwise insolvent, the purchaser may, at any time, terminate the contract, by giving written notice to the supplier, without compensation to the supplier provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

Termination of Contract for Convenience

10.33 After placement of contract, there may be some unforeseen situation compelling the purchaser to cancel the contract. In such a case, the purchaser is required to send a suitable notice to the supplier for cancellation of the contract, in whole or in part, for his (purchaser's) convenience, *inter alia*, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the purchase organisation may have to suitably compensate the supplier on mutually agreed terms for terminating the contract. Suitable provisions to this effect are to be incorporated in the tender document as well as in the resultant contract.

ANNEXURE – A

MODEL AMENDMENT LETTER FOR EXTENSION OF DELIVERY PERIOD FOR FOB/FAS/CIF CONTRACT

(Ref. Para 10.26)

Registered A/D
Speed Post

Address of the purchaser

To

M/s ……..

……

Sub : This office contract no…….. dated ……. placed on you for supply of ……

Ref : Your letter no……..... dated …….

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract delivery period/delivery period as last extended up to _____. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from _____ (last delivery period) to _____ (presently agreed delivery period).

2. Please note that in terms of clause…….. of the contract, a sum equivalent to ……% (…… per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as and if applicable) viz. zzz will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the further condition that, notwithstanding any stipulation in the contract for increase in price on any ground, no such increase, whatsoever, which takes place after zzz shall be admissible on such of the said goods as are delivered after the said date. But, nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on any ground (including the impact of the price variation clause, if incorporated in the contract), which takes place after the expiry of the above mentioned date namely zzz.

4. You are also required to extend the validity period of the performance guarantee for the subject contract from …… (present validity date) to ……. (required extended date) within 15 (fifteen) days of issue of this amendment letter.

5. Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

All other terms and conditions of the contract remain unaltered.

Yours faithfully,

(……)

for and on behalf of……..

Copy to :

……..
……..
……..
(All concerned)

zzz Original delivery date or the last unconditionally re-fixed delivery date (as the case may be)

Note: The entries which are not applicable for the case under consideration should be deleted.

ANNEXURE – B

MODEL AMENDMENT LETTER FOR EXTENSION OF DELIVERY PERIOD FOR CONTRACT OTHER THAN FOB/FAS/CIF CONTRACT

(Ref. Para 10.26)

Registered A/D
Speed Post

Address of the purchase office

To
M/s ……..

……

Sub : This office contract no…….. dated ……. placed on you for supply of ……..

Ref : Your letter no……..… dated …….

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract delivery period/delivery period as last extended up to _____. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from _____ (last delivery period) to _____ (presently agreed delivery period).

2. Please note that in terms of clause…….. of the contract, a sum equivalent to ……% (…… per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as and if applicable) viz. zzz will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the following further conditions:-

1) That no increase in price on account of any statutory increase in or fresh imposition of customs duty, excise duty, sales tax or on account of any other tax or duty leviable in respect of the goods specified in the said contract, which take place after zzz shall be admissible on such of the said goods as delivered after the said date.
2) That notwithstanding any stipulation in the contract for increase in price on any ground, no such increase whatsoever, which takes place after zzz shall be admissible on such of the said goods as are delivered after the said date.
3) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of custom duty, excise duty, sales tax or on account of any other tax or duty or any other ground whatsoever, including the impact of price variation clause (if incorporated in the contract), which takes place after the expiry of the above mentioned date namely zzz.

4. You are also required to extend the validity period of the performance guarantee for the subject contract from ……..(existing date) to …….. (required extended date) within 15 (fifteen) days of issue of this letter.

5. Please intimate your unconditional acceptance of this amendment letter, to reach this office within 10 (ten) days of issue of this letter, failing which the contract will be cancelled at your risk and expense without any further reference to you.

All other terms and conditions of the contract remain unaltered.

Yours faithfully,

(……)

for and on behalf of……..

Copy to :

……..

……..

……..

(All concerned)

zzz Original delivery date or the last unconditionally re-fixed delivery date (as the case may be)

Note : The entries which are not applicable for the case under consideration should be deleted.

ANNEXURE – C

MODEL FORMAT FOR PERFORMANCE NOTICE

(Ref. Para 10.27)

Registered A/D
Speed Post

Address of the purchase office

To

M/s _____

_____

_____

Sub : Contract No…….. dated ……..
placed on you for supply of ……...……

Dear Sirs,

Your attention is invited to the acceptance of tender cited above, according to which supplies ought to have been completed by you on or before _____. In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that xx are still outstanding even though the date of delivery has expired.

2. Although not bound to do so, the delivery date is hereby extended to _____ and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby

extended, the contract shall be cancelled for the outstanding goods at your risk and cost.

3. …….

4. …….

5. …….

6. …….

Yours faithfully,

(----------)

for ……

xx Details of outstanding goods.

ANNEXURE – D

MODEL FORMAT FOR CORRESPONDENCE WITH SUPPLIER AFTER BREACH OF CONTRACT

(Ref. Para 10.29)

Registered A/D
Speed Post

Address of the purchase office

To

M/s _____

_____

_____

Sub : Contract No…… dated ……
for supply of .....……

Dear Sirs,

The date of delivery of the subject contract expired on _____. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity so far supplied and, also, the quantity so far inspected but not yet dispatched and the quantity so far not tendered for inspection before the expiry of the date of delivery. The above information is required for the purpose of verification of our records and is not intended to keep the contract

alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(----------)
for……

CHAPTER - 11

ELEMENTS OF PRICE AND TERMS OF PAYMENT

Elements of Price

11.1 The elements of price included in the quotation of a tenderer depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules and regulations about taxes, duties, etc. of the seller's country and the buyer's country.

11.2 (l) In case of indigenous goods, the main elements of price are raw material price, production cost, overhead, packing and forwarding charges, margin of profit, transit insurance, excise duty and other taxes and duties as applicable.

(2) In case of imported goods, in addition to similar elements of price as above (other than excise duty and taxes), there may be elements of customs duty, import duty, landing and clearing charges and commission to Indian agents.

Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation and commissioning, operator's training etc.

11.3 It is, therefore, necessary that, to enable the tenderers to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery and, also the duties and responsibilities to be performed by the supplier in addition to supply of goods. Where the price has several components like price of the goods, costs for installation and commission, operators' training etc., the tenderers should be asked to furnish the cost break-up indicating the applicable prices for each such component (as specified and desired in the tender enquiry document) along with the overall price.

Currency

11.4 The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic tenderers are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation and commissioning of equipment) are to be quoted and paid in Indian currency.

Firm Price vis-à-vis Variable Price

11.5 For short term contracts where delivery period does not extend beyond 18 (eighteen) months, contract should be concluded with firm and fixed price by inviting tenders accordingly. Where it is decided to conclude the contract with variable price, an appropriate clause incorporating, *inter alia*, suitable price variation formula should also be provided in the tender enquiry documents. In the price variation clause, the price agreed upon should specify the base level viz. the month and year to which the price is linked, to enable variations being calculated with reference to the price levels prevailing in that month and year. A formula for calculation of price variation that has taken place between the base level and the scheduled delivery date is to be included in the price variation clause. The variations are to be calculated by using indices published by Government of India/Chamber of Commerce and Industry periodically. Suitable weights are to be assigned to the applicable elements viz. fixed overheads and profits, material and labour in the price variation

formula. If the production of the goods needs more than one raw material, then the input cost of material may be further sub-divided for different categories of material, for which cost indices are published. The price variation formula is also to stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible e.g., where the resultant increase is lower than, say, 2% (two percent) of the contract price, no price adjustment will be made in favour of the supplier.

11.6 The price variation formula, as and if necessary, should be formulated by a competent authority before incorporating the same in the tender enquiry document.

Exchange Rate Variation (ERV)

11.7 In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Rate Variation clause may be formulated in consultation with the Finance wing of the department, as needed, and incorporated in the Tender Enquiry Document. In that clause, the tenderers are to be asked to indicate import content(s) and the currency(ies) used for calculating the value of import content(s) in their total quoted price, which (the total quoted price) will be in Indian Rupees. The tenderers may be asked to indicate the Base Exchange Rate for each such foreign currency used for converting the foreign exchange content into Indian Rupees and the extent of foreign exchange rate variation risk they are willing to bear.

11.8 To work out the variation due to changes, if any, in the exchange rate(s), the base date for this purpose can be the due date

of opening of tenders. The variation may be allowed between the above base date and the date of remittance to the foreign principal. The applicable exchange rates as above will be according to the Trade Terms Selling Rates of Exchange as quoted by authorised Exchange Bankers approved by the Reserve Bank of India on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus 5 (five) percent. Any increase or decrease in the Customs Duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case delivery period is refixed / extended, ERV will not be admissible, if this is due to default of the supplier. The purchase department may formulate an appropriate ERV clause on similar lines as above in consultation with their Finance wing. The following documents should be furnished by the supplier for claiming ERV:

(1) A bill of ERV claim enclosing working sheet,

(2) Banker's Certificate/debit advice detailing foreign exchange paid, date of remittance and exchange rate,

(3) Copies of import order placed on supplier,

(4) Invoice of supplier for the relevant import order.

Duties and Taxes on Domestic Goods

11.9 The duties and taxes including excise duty and VAT levied by Government on domestic goods vary from product to product. As a general policy, the statutory variations in such duties and taxes are to be allowed during the period from the date of tender to the date of acceptance of the tender i.e. placement of contract and during the original/re-fixed delivery period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in

the prices of the goods on account of such statutory variations.

Note: Re-fixed delivery period means the fresh delivery period which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible. (refer para 10.17 of chapter 10)

11.10 In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be assumed that the prices quoted include these elements and no claim for the same will be entertained after opening of tenders and during the currency of the resultant contract. However, where the tenderer in its quotation mentions that the prices are exclusive of statutory duties and taxes and the same will be payable extra, this condition should be incorporated in the resultant contract in clear terms. At times, the tenderer, in its tender, mentions that its quotation includes current rates of taxes and duties as applicable and that statutory variations, if any at the time of supply, will be applicable. This condition may be acceptable. However, correctness of the taxes and duties quoted by a tenderer as applicable during that period is to be verified while considering its tender. Also, only statutory variations, and not any other type of variations are allowed.

Note: Sales Tax/VAT is not leviable on transactions of sale in the course of import. Categories of cases constituting sale in course of import are:

(1) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale.

(2) Where there is a privity of contract between the foreign supplier and the purchase department.

(3) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

Levies of Local Bodies

11.11 The goods supplied against contracts placed by departments are generally exempted from levies of local bodies. The suppliers should be informed accordingly by incorporating suitable instructions in the tender enquiry document and in the resultant contract. Wherever required, the suppliers should obtain the exemption certificate from the purchase department to avoid payment of such levies and taxes. In case, where the municipality or the other local bodies insist upon such payments (in spite of purchase department's exemption certificate), the supplier should make the payment to avoid delay in supplies and forward the receipt of the same to the purchase department for reimbursement and, also, for further necessary action by the purchase department.

Customs Duty on Imported Goods

11.12 In respect of imported goods, the tenderers shall also specify separately the total amount of customs duty included in the quoted price. The tenderers should also indicate correctly the rate of customs duty applicable for the goods in question and the corresponding Indian Customs Tariff Number. Where customs duty is payable, the contract should clearly stipulate the quantum of the duty payable in unambiguous terms. The standard clauses to be utilised for this purpose are to be incorporated in the tender enquiry documents. Government of India has allowed exemption from payment of customs duty in respect of certain types of goods for use by the following organisations:

(1) Scientific and technical instruments imported by Research Institutes.

(2) Hospital equipment imported by Government Hospitals.

(3) Consumable Stores imported by public funded Research Institutions or Universities.

11.13 However, to avail of such exemptions, the departments are required to produce 'Customs Duty Exemption' certificate and 'Not Manufactured in India' certificate at the appropriate time. **The relevant contemporary instructions covering these aspects should be incorporated in the tender enquiry document and in the resultant contract**.

Duties/Taxes on Raw Materials

11.14 The purchaser is not liable to any claim from the supplier on account of fresh imposition and/or increase (including statutory increase) of excise duty, customs duty, sales tax/VAT and other applicable taxes on raw materials and/or components used directly in the manufacture of the contracted goods taking place during the pendency of the contract, unless such liability is specifically agreed to in terms of the contract.

Terms of Payment for Imported Goods

11.15 (1) **Cases where Installation, Erection and Commissioning (if applicable) are not the responsibility of the Supplier**

100 % net FOB/FAS price will be paid against invoice, shipping documents, inspection certificate (where applicable), manufacturers' test certificate, etc.

(2) **Cases where Installation, Erection and Commissioning are the responsibility of the Supplier**

80% - 90% net FOB/FAS price will be paid against invoice,

inspection certificate (where applicable), shipping documents etc. and balance within 21 - 30 days of successful installation and commissioning at the consignee's premises (location) and acceptance by the consignee.

(3) **Payment of Agency Commission against FOB/FAS Contract**

Entire 100% agency commission is generally paid after all other payments have been made to the supplier in terms of the contract.

Payment of Air Freight Charges

11.16 Goods that are required to be air lifted, are to be despatched through Airlines only on a `Charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to Airlines in Rupees.

Advance Payment to Supplier

11.17 Ordinarily, payments for supplies made or services rendered should be released to the supplier only after the supplies have been made or services have been rendered. However, it may become necessary to make advance payments in the following types of cases:

(1) Advance payment demanded by firms holding maintenance contracts for servicing of Air-conditioners, computers, other costly equipment, etc.

(2) Advance payment demanded by suppliers against fabrication contracts, turn-key contracts, etc.

(3) Such advance payments should not exceed the following limits:

(a) Thirty per cent of the contract value to private firms (suppliers);

(b) Forty per cent of the contract value to a State or Central Government agency or a Public Sector Undertaking;

(c) In case of maintenance contract, the amount should not exceed the amount payable for 6 (six) months under the contract.

11.18 In exceptional cases, the departments may, in consultation with Finance department, relax the ceilings mentioned above. However, while making any such advance payment, adequate safeguards in the form of bank guarantee etc. should be obtained from the supplier. Further, such advance payments should be 'generally' interest bearing, suitable percentages for which are to be decided on case to case basis.

Documents for Payment

11.19 The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing payment. The important documents, which the supplier is to furnish while claiming payment, are:

(1) Original Invoice

(2) Packing List

(3) Certificate of country of origin of the goods to be given by the seller or a recognised Chamber of Commerce and Industry or other agency designated by the local Government for this purpose.

(4) Certificate of pre-dispatch inspection by purchaser's representative

(5) Manufacturer's test certificate

(6) Certificate of Insurance

(7) Bill of Lading/Airway Bill/Railway Receipt or any other dispatch document, issued by a Government agency (like the Department of Posts) or an agency duly authorised by

the concerned department.

(8) Product is new, un-used and also meets the other relevant contractual requirements.

While claiming payment, the supplier is also to certify in the bill that the payment being claimed is strictly in terms of the contract and all the obligations on the part of the supplier for claiming this payment has been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice etc. for claiming the payment.

Modes of Payment - Payment to Domestic Suppliers

11.20 As a general rule, payment for supplies is not permissible unless stores have been received, verified and taken to stock and provision for the observance of this rule should ordinarily be made in all contracts for the supply of goods.

11.21 Payment prior to verification of quantity and quality of goods is permissible only in very exceptional cases in which the operation of the rule in the above paragraph might result in hardship, as for example when costly stores are ordered from a distant supplier and delay in payment is anticipated. In such cases, a part of the cost of the consignments not exceeding 90 (ninety) percent to a distant supplier may be paid in advance on receipt of the railway receipt for dispatch or bill of lading provided the supplier or contractor is of well-known standing and a security bond is taken beforehand from the contractor or supplier to secure Government against all loss in the event of goods being found short or defective on checking. A standard form of security bond is given in Annexure to this chapter. The said security bond is chargeable

with stamp duty as per provisions of Indian Stamp Act,1899.

The officer who maintains the stock register must himself receive new stock. Whenever a new purchase had been sanctioned and the bill for drawing the money required is ready, it must be forwarded to the officer entrusted with the maintenance of the stock register, who should certify on the office copy of the bill that the new purchase in question has been duly taken on to the stock account. In those rare cases in which, it is not possible to receive stock before payment is made, e.g. when articles are received by rail, or post and payment is made against documents, the officer-in-charge of stock accounts should verify the new stock on receipt and furnish a certificate of verification which should be filed with the office copy of the bill concerned.

11.22 Payment should be made immediately after the stores are taken to stock. In no case should the payment be delayed for more than 30 (thirty) days from the date of receipt of goods. If in any case delay in payment is anticipated, the paying officer should intimate the supplier concerned the reasons for such delay. It is important that payment of bills should be made as expeditiously as possible after their presentation, as otherwise claims for interest might arise ending in litigation. Also, suppliers/contractors have to incur some expenditure for financing a transaction. To the extent they are able to effect a saving of financing cost by getting prompt payment, they would be able to pass on the saving to the purchaser. Prompt payment is, therefore, very important in bringing about economy in purchases.

Note: In the case of MSME units the payment should be effected within 15 (fifteen) days, from the date of receipt of goods.

11.23 The suppliers/contractors will produce stamped pre-receipted invoices in all cases where payments (advance/final) for release of railway receipts/shipping documents are made through banks. In exceptional cases where the stamped receipts of the suppliers/contractors are not received for the payments (in advance) the receipt of the bank (counterfoils of payment-in-slips issued by the bank) alone may be accepted as a valid proof for the payment made.

Payment to Foreign Suppliers

11.24 Payments to foreign suppliers should be made in Rupees in India. Payment in any other currency and in any other country requires prior sanction of Government. The payments may be effected as per the provisions given below:

(1) In cases in which there is no agreement regarding payment in advance, payment will be arranged only after the articles have been actually received and brought to account.

(2) In the case of advance payment to be made with order or during the course of manufacture or before dispatch of materials the prior sanction of Government is necessary.

(3) Since payments in any foreign currency require the sanction of Government, no Purchase Officer should make any commitments to pay in foreign currency before obtaining such sanction.

(4) The suppliers/contractors will produce stamped pre-receipted invoices in all cases where payments (advance/final) for release of railway receipts/shipping documents are made through banks. In exceptional cases where the stamped receipts of the suppliers/ contractors are not received for the payments (in advance) the unstamped receipt of the bank (counterfoils of pay-in-slips issued by

the Bank) may be accepted as a valid proof for the payment made.

Payment by Letter of Credit (LC)

11.25 Payment to foreign suppliers are ordinarily made by Letter of Credit (LC) opened by the State Bank of India/any scheduled Bank as decided by the purchase department. While opening the Letter of Credit, the department should follow the provision of Uniform Customs and Practices for Documentary Credit (UCPDC). If Letter of Credit is not opened, payment can also be made to the seller through Direct Bank Transfer for which buyer has to ensure that payment is released only after the receipt of prescribed documents.

11.26 Two banks are involved for payment to the supplier by Letter of Credit – purchaser's bank and supplier's bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by State Bank of India/ any scheduled Bank, along with all relevant details including authenticated copy of the contract. Based on the same, the purchaser's bank opens letter of credit on behalf of the purchaser for transacting payment to the supplier through the supplier's bank. Care should be taken to ensure that the payment terms and the documents to be produced for receiving payments through letter of credit are identical with those shown in the contract. Generally, irrevocable letter of credit is opened so that the supplier is fully assured of its payment on fulfilling its obligations in terms of the contract. In case, the delivery date of the contract is extended to take care of delay in supply, for which supplier is responsible, the tenure of the letter of credit is also to be extended, but the expense incurred for such extension (of letter of credit) is to be borne by the supplier.

E– Payment

11.27 E-Banking and E-Payments are now used by various banks by adopting Electronic Clearing System (ECS) and Electronic Fund Transfer (EFT) procedure. Payments to suppliers may be made through such mechanism where such facilities are available.

Deduction of Income Tax, Service Tax, and others applicable Taxes at Source

11.28 This should be done as per the existing law in force during the currency of the contract.

Recovery of Public Money from Supplier's Bill

11.29 Sometimes, requests are received from a different department for withholding some payment of a supplier out of the payment due to it against a contract. Such requests are to be carefully examined by the department (which has received the request) on the merits of the case for further action. It will however, be the responsibility of the department asking for withholding of payment to defend Government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

Refund from Supplier

11.30 Sometimes, the suppliers, after claiming and receiving reimbursements for sales tax, VAT, excise duty, customs duty and other taxes if any, from the purchaser, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receives the allowable refunds. Such refunds contain the purchaser's share also (out of the payments already made by the purchaser to that supplier). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the supplier.

Payment against Time Barred Claims

11.31 Ordinarily, all claims against Government are time barred after a period of 3 (three) years calculated from the date when the payment falls due unless the payment claim preferred has been under correspondence. However, limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the department concerned in consultation with the Paying Authority. It should be ensured that no payment against such time barred claim is made till a decision has been taken in this regard by the competent authority.

ANNEXURE

FORM OF SECURITY BOND FOR ADVANCE PAYMENT

(Ref. para 11.21)

KNOW ALL MEN BY THESE PRESENT THAT I/WE ……..…… (here enter name(s) and address(es) of the person or persons) (hereinafter called "the Contractor") bind myself/ourselves to the Governor of Uttar Pradesh (hereinafter called "the Government") for the payment to the Government of the sum of Rs…….. (Rupees in words.)

Signed by

Shri…….....

Shri…….. in the presence of witnesses.

1…….

2…….

WHEREAS by Security bond executed on the ….…. day of …….....BETWEEN the Government and the Contractor (hereinafter called "the said Agreement") the Contractor has agreed to supply to the Government of Uttar Pradesh ……(here enter the name of material) (hereinafter collectively called as "the materials') in pursuance of supply Order No……..…… dated…….....

WHEREAS one of the conditions of the said security bond is that all payments to the Contractor for supplies effected satisfactorily will be made after scrutiny of the bills; WHEREAS the

Contractor has requested the Government to make advance payment on the basis of railway receipt for dispatch/or bill of lading or against proof of dispatch of the …….. (here enter details of materials) before actual receipt and verification of the materials agreed to be supplied as per the said agreement.

AND WHEREAS the Government have agreed to advance to the Contractor …….. Percent of the value of the materials agreed to be supplied;

AND WHEREAS for the purpose of security and indemnifying the Government against all loss or damage which the Government may suffer in the event of materials supplied being found short or defective on checking and in consideration of the said advance payment of ……. (in words also) by the Government to the Contractor it has been agreed by the Contractor to execute this bond subject to the conditions hereinafter contained.

NOW THE CONDITION of the above written Bond is such that if the Contractor supplies the materials mentioned in the said agreement in complete satisfaction of the Government and in conformity with the provisions of the said security bond the above written bond shall be void otherwise the same shall be and remain in full force and effect.

And when the Contractor abandons the work/supplies before its due completion or when the contract is determined under the provisions of the contract or when under the provisions of the contract the work/supplies is /are taken out of the contractor's hands to be executed/made by the Government or by other persons at the risk and expense of the contractor, then and in any such case the amount of the

advance which remains unaccounted for under the provisions of the contract against the work done/supplies made shall be forthwith repaid by the contractor to the Governor together with interest thereon at 12 (twelve) percent per annum from the date of abandonment, determination or taking the work/supplies out of the contractor's hand as herein before provided to the date of repayment of the full amount. The contractor further agreed that he shall, in addition, pay to the Governor all the costs, charges and expenses incurred by the Governor towards the recovery thereof.

All sums found due to the Government from the Contractor under or by virtue of this deed shall be recoverable from the Contractor and his/their properties both movable and immovable under the provisions of the Revenue Recovery Act,1890 as applicable in Uttar Pradesh, as though such sums are arrears of land revenue and in such other manner and within such time as the Government may deem fit. In deciding what sum of money is due to Government under or by virtue of this agreement the Contractor agrees that the decision of the Government shall be final and conclusive and shall be binding on the Contractor.

IN WITNESS WHEREOF Shri…….....
has signed this ……day of ……
Signed by Shri. ……
In the presence of witnesses:

1. …….
2. …….

CHAPTER – 12

QUALITY CONTROL AND INSPECTION OF ORDERED GOODS

Introduction

12.1 The procuring entity or its representative has the right to inspect and/or to test the goods to confirm their conformity to the contract specifications at no extra cost to it. Before accepting the ordered goods, it must be ensured that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. To achieve the same, the tender document and the subsequent contract should specify the details of inspection and tests to be carried and stages and manner for carrying out the same. The details of the Inspecting Officer(s) are also to be incorporated in those documents. The required inspections and tests should be carried out by the technically qualified and competent personnel. If the purchasing department does not have such qualified personnel, it may engage competent professionals from outside agencies.

Stages and Modes of Inspection

12.2 The stages and modes of inspection will depend on the nature of the goods, total value of the contract, location of the supplier, location of the user, etc. Usually, following types of inspection are adopted:

(1) **Pre-dispatch Inspection**: This type of inspection is conducted during the manufacturing process (which is known as Stage Inspection) and on the finished products before dispatch of the goods from supplier's premises.

(2) **Inspection of goods on receipt at consignee's / user's site**: Such inspection is done on receipt of goods at site before accepting the same.

(3) **Inspection after Installation and Commissioning of the equipment at site:** This method is adopted to check the performance and output of the equipment / machinery after the same is commissioned at site.

Inspection Procedure

12.3 The inspection procedure will be as per the provisions contained in the contract. After satisfactory inspection and tests, the acceptable goods shall be stamped, labelled, marked or sealed, according to the circumstances in such a way as to make subsequent identification of accepted lots easy for the consignee/user. For goods, not meeting the contract requirements the Rejection Inspection Notes shall be issued immediately. A time limit shall be fixed for issue of Inspection documents. Facsimile of the Inspection stamps and their position should be put on the Inspection Notes to help identifying the inspected goods at the consignee's end.

12.4 Departmental instructions should be followed in this regard. Departmental instructions should invariably prescribe that paying authorities will keep a record of specimen signature of authorised Inspecting Authorities for verifying the same with the signature in the Inspection Note while authorising payment.

Inspection Documents

12.5 Inspection Notes in the form prescribed by the department shall be issued in significance of the acceptance of the goods. Inspection Note should have provision for entering consignee’s receipt certificate (confirming receipt of goods) on it. Consignee's receipt certificate portion of the Inspection Notes shall be filled by the consignee after receipt of the goods, verification of quantity and inspection marks on the accepted goods and taking the supplies in its stocks, signifying its (consignee’s) acceptance. Inspection Note shall also indicate the

validity period, by which period the supplier must dispatch the accepted goods to the consignee in terms of the contract. The number of copies of the Inspection Notes and their distribution for different types of inspections will be as prescribed by the department. Each Inspection Note issued shall invariably bear the name, stamp with designation and code no. of the officer authorised to sign and issue Inspection documents.

Outside Testing Laboratories

12.6 Sometimes, it becomes necessary for the purchase organisation to conduct type test, acceptance test or special test at outside laboratories, when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. Departments should draw up a list of approved laboratories for this purpose, to whom the samples drawn from the lots offered by the supplier can be sent for tests. The list should also contain approved laboratories, which can be used as referral/appellate laboratories for retest, when samples tested at one laboratory are decided to be re-tested. The department shall lay down a liability statement for cost of samples expended in tests, dispatch of samples, transportation costs, test charges etc. in respect of samples tested at outside laboratories as applicable in various situations. In cases where the samples are to be tested at supplier's cost on account of non-availability of their own testing arrangements, the responsibility of depositing the testing fee, etc. would rest with the supplier.

Samples

12.7 When a contract is concluded on the basis of approved sample the same shall bear seals and signatures of the approving authority(ies) as appropriate. Various types of samples like Standard Sample, Tender Sample, Advance Sample, Bulk Supply Sample, Complaint Sample,

Audit Sample, Reference Sample etc. may be encountered during the procurement process. Such samples shall be drawn, retained, classified and disposed in accordance with the instructions issued by the department. A Register of Samples shall be maintained. An officer shall be made in-charge who will be responsible for all activities in this regard. There shall be a system of physical verification of samples, which shall be done at prescribed intervals and certificates to this effect shall be recorded in the Register of Samples. The Samples, which have completed the retention period and no longer required, shall be set aside for public auction periodically.

Handling of Inspection Stamps/Inspection Documents

12.8 Each Inspecting Officer shall be supplied with Acceptance stamps, Lead Seals, Pliers, Rubber Stamps, Stencils, Labels, Stickers, Holograms etc. according to the requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for safe keeping of these articles and shall ensure that they are not misused by unauthorised persons. Unserviceable Seals, Pliers, Stamps, stickers, Holograms etc. shall be returned to the concerned issuing official. Departments shall lay down detailed guidelines covering all these aspects.

Custody of Inspection Notes

12.9 For reasons of security and to avoid irregular or incorrect issue, the Inspection Notes should be machine numbered and wherever possible different colour copies marked for each user. An account of the Inspection Notes issued with serial number wise details shall be maintained in an appropriate register. The department should also develop a foolproof system to avoid any fraudulent and unauthorised use of the inspection notes.

Inspection of goods tendered at Fag End / Last Date of the Contract Delivery period

12.10 As far as possible, the inspection should be commenced and finished and Inspection Notes issued during the validity period of the contract so that the contract is not kept alive after expiry of delivery period. In cases where the supplier offers goods for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should be made by the Inspecting Officer to commence the inspection before the expiry of the delivery period. In cases where it is not possible to commence/conclude the inspection before the expiry of the delivery period, the Inspecting Officer should immediately on receipt of the intimation or request for inspection of the goods, bring to the notice of the supplier orally as well as in writing that the stores have been submitted for inspection at the very late stage and that it is not possible to commence/conclude the inspection before the expiry of the delivery period.

12.11 The supplier should also be informed that the goods offered for inspection will, however, be inspected till the completion of the inspection which can be after the expiry of the delivery period and such an inspection continuing after the expiry of the delivery period is neither intended nor is to be construed as keeping the contract alive. The Inspecting Officer should invariably issue such notice to avoid the contract being kept alive after the expiry of the delivery period. In a case, where the inspection is commenced before the expiry of the delivery period and the Inspection Note is issued after the expiry of the delivery period, the Inspection Note, whether accepting or rejecting the goods, shall be duly franked as per the standard franking clause as

given below as an abundant precaution against keeping the contract alive:

(1) **Franking Clause in the case of Acceptance of Goods**

'The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the purchaser under the terms and conditions of the contract.'

(2) **Franking Clause in the case of Rejection of Goods**

'The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the purchase in any manner. The goods are being rejected without prejudice to the rights of the purchaser under the terms and conditions of the contract.'

Acceptance of Goods against Supplier's In-house Inspection Report and Warranty

12.12 In case of goods to be imported from abroad, pre-dispatch inspection of goods at supplier's premises involves considerable expenditure to the purchaser. In such a situation, the purchaser may substitute pre-dispatch inspection by its own inspector with manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, etc. should also be kept in view and appropriate decision taken. For checking the reputation and background of the supplier, the purchase organisation may also request the Indian Embassy located in that country for a report on the technical and financial competence of the firm (supplier). Further, trustworthy publications like 'Thomas Register', 'Dun and Brad Street Register', etc. are also available in USA and Europe which provide authentic

technical and financial data and details of the manufacturing companies located in those countries. Such publications may also be relied upon for this purpose.

Purchaser's Right of Rejection

12.13 Purchaser has the right to reject the goods on receipt at site during final inspection though the goods have already been inspected and cleared at pre-dispatch stage by the purchaser's inspector. However, such rejection should be strictly within the contractual terms and conditions and no new condition should be adopted while rejecting the goods during final inspection.

Acceptance of Goods vis-à-vis Warranty Provisions

12.14 Goods accepted by the purchaser at initial inspection and in final inspection in terms of the contract shall in no way dilute purchaser's right to reject the same later, if found deficient in terms of the warranty clause of the contract.

Joint Investigation against Complaints relating to Quality of Goods

12.15 In case a written complaint is received from the supplier disputing rejection of goods by the purchaser's inspecting officer, the same should be jointly investigated by a team consisting of an authorised representative of the purchase organisation, a senior representative of the inspecting agency, who is well conversant with the goods and an authorised representative of the supplier. Detailed procedure to be followed in this regard and the format of the joint inspection report (to be signed by all the team members) are to be prescribed by the purchasing department and the matter processed accordingly for further necessary action.

Economy in Inspections

12.16 It may occasionally be necessary to undertake inspection in public service, though the cost of traveling etc., exceeds the charges payable by the supplier. However, all possible care should be taken to reduce such cases by combining other inspection(s) in the same trip.

CHAPTER - 13

ADVERTISED TENDER ENQUIRY
(OPEN COMPETITIVE BIDDING)

Open Tender System

13.1 The open tender system, i.e. invitation to tender by advertisement, should be used as a general rule for procurement of goods whenever the estimated value is above Rs. 25 (twenty five) lac. In case of purchases of manufactured goods or stores (eg. purchase of printing paper), invitation of tenders can be restricted from manufacturers, provided the Purchase Officer considers it necessary in public interest and the Departmental Purchase Committee so approves.

Publication of Tender Notice

13.2 (1) In all cases of open tender, it is essential that wide publicity is given to the tender notification. A procuring entity shall solicit bids in open competitive bidding and two stage bidding, or, where applicable, applications for pre-qualification by causing an invitation to bid or pre-qualify, as the case may be, to be published in the State Public Procurement Portal in addition to posting on the website of the Procurement Entity (department concerned). An abridged notice shall also be published in at least one Hindi and one English well known newspapers having wide circulation so that the information also reaches the hub of prospective suppliers.

(2) An invitation to bid to be published in the State Public Procurement Portal/Departmental website shall contain, at least, the following information:

(a) the name and address of the procuring entity;

(b) a summary of the terms and conditions of the procurement contract or rate contract to be entered into,

including the nature, quantity and place of delivery of the goods to be supplied, as well as the required time for the supply of the goods;

(c) whether the bid procedure will be conducted in a single stage or two stages and whether it is to be presented simultaneously in two envelopes: one envelope containing the technical, quality and performance characteristics of the bid, and the other envelope containing the financial aspects of the bid;

(d) the criteria and procedures to be used for evaluating the qualifications of suppliers;

(e) the means of obtaining the bidding documents and the place from which they may be obtained;

(f) the price, if any, charged by the procuring entity and the means of payment for the bidding documents and the amount of bid security and its form; and

(g) the manner, place and deadline for the submission of bids;

(h) right of the procuring entity to cancel the bid process and reject any and all of the bids;.

(i) any other important information.

(3) An invitation to prequalify to be published in the State Public Procurement Portal/Departmental website shall contain, at least, the following information:

(a) the name and address of the procuring entity;

(b) a summary of the terms and conditions, to the extent known at the time of invitation to pre-qualify, of the procurement contract or rate contract to be entered into or the empanelment to be done as a result of the

procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, as well as, the required time for the supply of the goods;

(c) the criteria and procedures to be followed for evaluating the qualifications of bidders;

(d) the means of obtaining the pre-qualification documents and the place from which they may be obtained;

(e) the price, if any, charged by the procuring entity and the means of payment for the pre-qualification documents and subsequent to pre-qualification, for the bidding documents; and

(f) the manner, place and deadline for presenting applications to pre-qualify and if already known, the manner, place and deadline for presenting submissions.

(4) The NIB for goods, estimated to cost above Rs. 10 crore (Rs. ten crore) may also be sent to the Director General, Commercial Intelligence and Statistics, Kolkata for publication in Indian Trade Journal.

(5) The NIB to be published in the newspapers must be brief. Bids for more than one lot of goods, to be procured must be included in one NIB.

Where the department feels that the goods of the required quality, specifications etc. may not be available in the country and/or it is also necessary to look for suitable competitive offers from abroad, the department may send copies of the tender notice to the Indian Embassies abroad as well as to the Foreign Embassies in India requesting them to give wide publicity of the requirement in those countries. They may also be requested to put the tender notice on their web sites. The selection of the embassies will depend on the possibility

of availability of the required goods in such countries. Publicising the requirement globally as above is also known as Global Tender Enquiry.

13.3 Ordinarily, the minimum time to be allowed for submission of bids should be 3 (three) weeks/ 21 (twenty one) days from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Where the department also contemplates obtaining bids from abroad, the minimum period should be kept as 4 (four) weeks/ 30 (thirty) days for both domestic and foreign bidders.

Note : Under the e-procurement system, the invitation to tender is only to registered vendors. The tender notifications, bid clarifications, corrigendum and addendum, minutes of the pre-bid meeting, etc., will be published in the e-Government Procurement Portal and shall be the sole mode of official communication to the vendors. However, consolidated advertisements in one regional and one national daily may be issued for e- procurement.

Text of Tender Notice

13.4 The tender notice for an Open Tender should be carefully drafted. It should contain all the salient features of the requirement in brief to give a clear idea to the prospective tenderers about the requirements. Superfluous or irrelevant details should not be incorporated in the tender notice, as it will increase the cost of the advertisement. The Tender Notice in abridged form should contain:

(1) Description and specification of the goods and quantity

(2) Period and terms of delivery

(3) Cost of the tender/bidding document

(4) Place(s) and deadline of sale of tender documents

(5) Place and deadline for receipt of tenders

(6) Place, time and date for opening of tenders

(7) Amount and Form of Bid Security/Earnest Money Deposit

(8) Any other important information

It should clearly be mentioned in the NIB published in newspapers that detailed information is available at the State Public Procurement Portal/Departmental Website.

With a view to having wider, fair and adequate competition, sufficient time should be allowed, except in case of recorded emergencies, wherein also a reasonable time should be permitted and tenders sent by faster means like speed post/fax.

Note : A list of check points for preparation of Tender Enquiry is available at Annexure-A to this chapter.

Format of Tender

13.5 The tenderers are to furnish their quotations as per the prescribed format and also as per the instructions incorporated in the tender documents. Quotations sent by telex, cable or facsimile are to be ignored and rejected. Instructions for preparation of tender documents are available at Annexure-B to this chapter.

With a view to streamlining the procedure and to detect deficiencies in the tender documents submitted by the bidders, a checklist of all documents required in proper sequence should be drawn out for convenience of comparison and for ascertaining that all the documents have been received.

Cost of Tender Documents

13.6 Price of the tender document should take care of the preparation and delivering cost only. If it is too high, it will

discourage the prospective bidders to purchase the document and participate in the bidding process.

13.7 The following scales of price are prescribed for tender forms to be issued by Government departments.

(1) Ordinary tenders involving supply of goods:

Estimated value of goods for which tenders are invited	**Cost of tender forms**	
	Original copy each (Rs.**)**	**Duplicate copy each (**Rs.**)**
Above Rs. 1.00 lac (Rs. one lac) and upto Rs. 10 lac (Rs. ten lac)	0.2% of the cost of tender rounded to the nearest multiple of 100, subject to a minimum of Rs. 400 and maximum Rs. 1500 plus local taxes as applicable	50% of the cost of the original copy, rounded to the nearest multiple of 100 plus local taxes as applicable
Above Rs. 10 lac (Rs. ten lac)	0.15% of the cost of tender rounded to the nearest multiple of 100, subject to a maximum of Rs. 25000 plus local taxes as applicable	50% of the cost of the original copy, rounded to the nearest multiple of 100 plus local taxes as applicable

(2) Special tenders with drawing, etc., involving erection of plant and machinery.

Estimated value of goods for which tenders are invited	**Cost of tender forms**	
	Original copy each (Rs.**)**	**Duplicate copy each (**Rs.**)**
Upto Rs. 10 lac (Rs. ten lac)	0.25% of the cost of tender rounded to the nearest multiple of 100 plus local taxes as applicable	50% of the cost of the original copy rounded to the nearest multiple of 100 plus local taxes as applicable
Above Rs. 10 lac (Rs. ten lac)	0.20% of the cost	50% of the cost of the original copy

	of tender rounded to the nearest multiple of 100, subject to a maximum of Rs. 35000 plus local taxes as applicable	rounded to the nearest multiple of 100 plus local taxes as applicable

13.8 General conditions of the contract for plant, machinery and manufactured equipment should be usually supplied with the special tender form and extra copy at Rs. 200 per copy.

13.9 Ordinarily duplicate copies of tender forms should be issued only to companies, firms or individuals etc. who have purchased the original copy. But in the case of special tenders duplicate copy can be issued to applicants for reference even if they have not purchased the original copy. But in such cases care should be taken to see that the tenders are submitted only in original copies.

13.10 The cost of tender forms may be accepted in cash or DD only. Postal orders, postal stamps or bank cheques should not be accepted. No forms should be sent by V.P.P. or in advance.

13.11 In certain other cases even though the amount involved is more than Rs. 1.00 lac (Rs. one lac) priced tender forms may not be desirable e.g., procurement of fuel oils, motor vehicles.

13.12 In all cases of Running contracts/Rate contracts priced tender forms are essential irrespective of the amount involved, unless otherwise decided by Government.

Sealing and Marking of Tenders

13.13 The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate, etc.) required to be submitted. The tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as 'original', 'duplicate' and so on and also putting the address of the purchase office and

the tender reference number on the envelopes. Further, the sentence 'NOT TO BE OPENED before ……..' (due date and time of tender opening) are also to be put on these envelopes. The inner envelopes are then to be put in a bigger outer envelope, which will also be duly sealed and marked, etc. as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening, etc. All the above instructions are to be suitably incorporated in the tender documents.

Note : Under e-procurement the tender forms can be downloaded from the Library of e-Government Procurement Portal/Departmental Website.

Sale of Tender Documents

13.14 Tender documents must be made available to the prospective bidders from the time tender enquiry is advertised until one hour before the dead line fixed for the submission of bids and the same should be clearly indicated in the ATI. The organisation should also post the complete tender document on the website and permit prospective tenderers to make use of the document downloaded from the website. There should be clear instructions for the tenderers in the document (which has been downloaded) to pay the amount along with the tender, prepared in the downloaded document. The sale of tender documents against Open Tender should not be restricted. The purchase department shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

Pre-bid Clarifications

13.15 (1) Any bidder may, in writing, seek clarifications from the procuring entity in respect of the bidding documents.

(2) The period within which the bidders may seek clarifications under sub-para (1) and the period within which the procuring entity shall respond to such requests for clarifications shall be specified in the bidding documents.

(3) All requests for clarification and responses thereto shall be intimated to all bidders and where applicable, shall be exhibited on the State Public Procurement Portal/Departmental Website.

(4) A procuring entity may hold a pre-bid conference to clarify doubts of potential bidders in respect of a particular procurement and the records of such conference shall be intimated to all bidders and where applicable, shall be exhibited on the State Public Procurement Portal/Departmental Website.

Pre-bid Conference

13.16 In case of turn-key contract or contract of special nature for purchase of sophisticated and costly equipment, a suitable provision is to be kept in the tender enquiry document for a pre-bid conference for clarifying issues and clearing doubts, if any, about specification and other allied technical details of the plant, equipment and machinery projected in the tender enquiry document. The date, time and place of pre-bid conference should be indicated in the tender enquiry document for information of the interested tenderers. This date should be at least 12 (twelve) days before the dead line for the submission of bids.

Invitation of Tenders

13.17 Whenever tenders are invited, the procedure as mentioned below shall be followed.

(1) A phased programme may be drawn up for inviting the tenders so that there is no rush of tenders at any time and priority is given to articles which are in urgent need.

(a) Tenders can be invited even during the current financial year for normal and recurring supplies likely to be required by various departments in the forthcoming year but actual financial commitment should be entered into only after the funds are available for the purpose.

(b) In the case of requirements of bulk or costly machinery for which competitive quotations can be obtained for forward delivery, tenders should be invited well in advance of the requirements so that stock purchases at prohibitive prices are avoided.

(c) Rush purchases towards the end of the financial year solely with a view to preventing lapse of the budget grants should be avoided. Such purchases have an undesirable effect in as-much-as observance of the rules regarding invitation of tenders, proper scrutiny of offers, etc., are rendered impossible at such high pressure and leads to waste of money.

(2) The tenders should not be made unwieldy by including too many items of different kinds of materials in the same tender. Where purchases are large one tender notice should normally contain only one kind or class of articles.

(3) The requirements of the same or similar articles should be consolidated and tenders invited in order to secure the advantage of competitive prices for bulk supply. Tenders should not be invited by the same department for the same class of articles several times during the same year. Apart from losing the advantage of bulk

purchases, piecemeal purchase results in avoidable work and delay.

(4) Tenderers should be allowed to quote for all the items included in a tender or a part thereof. They should also be allowed to make suitable alternative offers.

(5) A Purchase Officer who invites tenders for the supply of goods may exercise full discretion regarding the place of delivery to be specified in the invitation of tender. The conditions should as far as possible be such as to give all tenderers equal opportunities of tendering at their lowest rates. When tenders are invited for the supply of plant and equipment and the successful tenderer is to erect the plant at site, the appropriate conditions in regard to delivery at site should be included in the invitation of tender or in the general specifications.

(6) All articles required for use in the public service shall be purchased on the condition that delivery shall be made in India and payment in Rupees. Except in special cases, full payment should not be made for any stores against shipping or railway documents, and payment should be completed only after the Receiving Officer has taken delivery of stores and found them to be satisfactory in every respect.

(7) It is important that in all cases decisions regarding the selection of offers are taken promptly and acceptances communicated to, or supply orders placed with the selected tenderers before the period of validity of rates.

Note: Under the e-procurement system the bids shall be submitted online and parallel submission of bids through paper format is not allowed. Virtual Tender Box shall be treated at par with the physical Tender Box. Time for submission of the bids online will be as given under the particular tender notice.

Modification of Tender Documents and Extension of Tender Opening Date

13.18 Sometimes, situations may arise necessitating modification of the tender documents already issued (Limited Tenders) or already put on sale (Open Tenders). Also, after receiving the documents, a tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment/modification should be simultaneously sent to all the selected suppliers by registered/speed post/courier/e-mail in case of Limited Tender. In case of Open tender, the copies of such amendment/modification are to be simultaneously dispatched, free of cost, by registered/speed post/courier/e- mail, to all the parties who have already purchased the tender documents. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents put on the website.

When the amendment/modification changes the requirement significantly and/or when there is not much time left for the tenderers to respond to such amendments, and prepare revised tender, the time and date of submission of tenders may also be extended suitably, along with suitable changes in the corresponding time-frames for receipt of tender, tender validity period, etc., and validity period of the corresponding EMD (Bid security). Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

Amendments/Modifications to Tenders

13.19 The tenderer, after submitting its tender, is permitted to submit alterations/ modifications to its tender so long such alterations/modifications are received duly sealed and marked like original tender, upto the date and time of receipt of tender. Any amendment/modification received after the prescribed date and time of receipt of tenders are not to be considered. (also refer para 9.10 of chapter 9)

A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. It should be noted, however, that the act of habitually withdrawing from bidding or submitting letter of non-participation for at least 3 (three) times within a year is a ground for the imposition of administrative penalties, except when done for a valid reason.

Receipt and Custody of Tenders

13.20 Receipt and custody of tenders shall be done in a transparent manner. Tenders are to be received through tender box and, in its absence, by hand delivery to the nominated officials of the purchasing authority. The tender box should be located in a place, which is easily accessible to the parties for dropping their tenders. The tender box shall have two locks. Key of one lock will be with the Head of the Office and the other key with the official nominated by him. On each occasion of tender opening, the tender box will be opened by two officials at the prescribed date and time (as per the date and time specified for receipt of tenders) and the relevant tenders will be taken out. In the tender box, there may be tenders for other cases due for opening later; such tenders are to remain in the tender box under lock and key. The tenders so taken out are to be entered in a challan in duplicate, duly signed with date and time by the two

officials and sent to the officials authorised to open the tenders. Signatures of the receiving officials will be obtained on the duplicate copy of the challan for record. Model format of challan is available at Annexure-C to this chapter.

13.21 There may be cases where the tenders are too bulky to be put in the tender box or the purchase office is yet to install tender box and, therefore, the tenders are to be submitted by hand. In such cases, it should be ensured that names and designations of at least two officers, who will receive the tenders, are prominently mentioned in the tender documents. The information about these officers should also be displayed at the entrance/reception of the premises where tenders are to be deposited. The officer receiving a tender is to give the bearer of the tender a receipt duly signed by him with date and time of receipt of the tender. A separate register is to be maintained for keeping records of the bids, received by hand. Such bids will be kept in safe custody with the head of the office or his authorised representative till the date and time of bid opening and then such bids will be handed over to the bid opening officer through challan, in identical manner as mentioned in the previous paragraph.

Sometimes, tenders are also received by post. Such tenders shall be received and documented in identical manner as applicable for tenders received through hand delivery.

Late Tender

13.22 In the case of Advertised tender enquiry or Limited tender enquiry, late tenders (tenders received after the specified date and time for receipt of tenders) shall not be considered.

Opening of Tenders

13.23 All the tenders received on time shall be opened in the

presence of authorised representatives of the tenderers (who have submitted regular tenders) at the prescribed time, date and place. The authorised representatives, who intend to attend the tender opening, are to bring with them letters of authority from the corresponding tenderers. Tenders should be opened immediately after the deadline of receipt of tenders with minimum time gap in between. At least 2 (two) duly authorised officials of the department should jointly open the tenders. The tender opening officials are to announce the salient features of the tenders like description and specification of the goods, quoted price, terms of delivery, delivery period, discount if any, whether EMD furnished or not and any other special feature of the tender for the information of the representatives attending the tender opening.

After opening, every tender shall be numbered serially, initialed, and dated on the first page by all the officials authorised to open the tenders. Each page of the price schedule or letter attached to it shall also be initialed by them with date, particularly the prices, delivery period etc., which shall also be circled and initialed with date. Blank tenders, if any, should be marked accordingly by the tender opening officials.

13.24 The original, duplicate, triplicate copies in a tender set are to be marked accordingly by the tender opening officials. Alterations in tenders, if any, made by the tenderers, shall be initialed with date and time by the officials opening the tenders to make it perfectly clear that such alterations were present on the tenders at the time of opening. Wherever any erasing or cutting is observed, the substituted words should also be encircled and initialed with date and time to make clear that such erasing/cutting of the

original entry was present on the tender at the time of opening.

Responsibility of the Tender Opening Officials

13.25 The tender opening officials will prepare a list of the representatives attending the tender opening and obtain their signatures on the same. The list will also contain the representatives' names and the corresponding tenderers' names and addresses. The authority letters brought by the representatives will be attached with this list. This list will be signed by both the tender opening officials with date and time. An on-the- spot report containing the names of the tenderers (serial number wise) salient features of the tenders, as read out during public opening of tenders will be prepared by the tender opening officers duly signed by them with date and time.

13.26 The tenders, which have been opened, the list of the representatives attending the tender opening and the on-the spot report are to be handed over to the nominated purchase officer and acknowledgement obtained for the same.

13.27 The members of the Tender Committee should give an undertaking at the appropriate time, that none of them has any personal interest in the Companies/Agencies participating in the tender process. Any member having interest in any Company/agency participating in tender process, should therefore refrain from participating in the Tender Committee.

Two Bid System

13.28 For purchasing capital equipment, high value plant, machinery, etc., of complex and technical nature, tender enquiry document, complete in all respects, may be issued as usual. However, the tenderers should be asked to bifurcate their quotation in two parts. The first part is to contain the relevant technical

specifications and allied commercial details and earnest money (wherever asked for) as required in terms of the tender enquiry documents and the second part should contain only the price quotation. The first part is commonly known as 'Technical Bid' and the second part 'Financial Bid'.

13.29 The Technical Bid and the Financial Bid shall be sealed by the tenderer in separate covers duly super scribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed following similar procedure as prescribed under para 13.13 of this chapter. The Technical Bids are to be opened in the first instance, at the prescribed time and date and the same will be scrutinised and evaluated by the competent committee/authority with reference to parameters prescribed in the tender documents and the offers received from the tenderers. Thereafter, in the second stage, the Financial Bids of only the technically acceptable offers (as decided in the first stage above) are to be opened for further scrutiny, evaluation, ranking and placement of contract.

ANNEXURE- A

Check Points for Preparation of Tender Enquiry

(Ref. para 13.4)

Ensure that

1. standard forms are used for issue of tender enquiry and all amendments authorised to these forms from time to time are carried out before issue and that the cost of tender/bidding document is given.
2. the place(s) and timing of sale of tender documents have been given.
3. place, time and date for receipt of tenders have been indicated.
4. the prescribed time has been allowed to the tenderers to submit their quotations depending on the type of enquiry being issued.
5. the period for which the tenders are to be kept open for acceptance has been indicated realistically, keeping in view the nature of the goods and the time lag likely to be involved where consultation with the indenter on the suitability of offers received would become necessary.
6. the amount to be furnished as EMD has been calculated correctly and indicated.
7. description of goods including specifications/drawing and quantity is correctly indicated in the schedule.
8. the special clause relating to coverage of additional quantity has been incorporated.
9. the sources from where the specifications/drawing can be obtained are indicated.
10. If goods are required as per BIS specification, a clause for bidding purchase preference to ISI marked goods is included.
11. If the goods are required to non standard specification/drawing, required number of copies of drawings/specifications are available.

12. Where tender sample is required to be furnished, authority to whom it should be sent for testing and time within which the sample should be submitted are indicated correctly in the enquiry.
13. If the goods are reserved items for purchase from any particular sector of industry, a clear indication is given to that effect.
14. Sufficient number of copies of tender enquiry are being sent to NSIC in case of goods where micro, small and medium scale units will be interested to supply.
15. Inspecting authority is correctly indicated.
16. The instructions to invitation to tender and conditions of contract applicable have been correctly indicated in the enquiry.
17. the following clauses have been correctly incorporated

a. Sales Tax/VAT.

b. Customs Duty.

c. Excise Duty.

d. Transit Insurance.

e. Networth

f. Turnover

g. Income Tax Return

h. Any other applicable Taxes

18. the contract clauses contained in the standard forms used for issue, of tender enquiry and the General and Special Conditions of Contract are not reproduced in the tender enquiry.
19. the appropriate price variation clause in the enquiry, where such a provision is necessary, has been given along with base price on which tenderers should offer their prices.
20. delivery required is correctly given. Where purchase of large quantities of goods are involved delivery may be specified in

instalments particularly in respect of cases where contracts are likely to be concluded on variable price bases.

21. standard pre-estimated liquidated damages clause is inserted in the tender enquiry for claim against delay in supplies.
22. the following special points in regard to risk purchase tender enquiry have been correctly incorporated.
    (a) Risk purchase tender enquiry should be on the same terms and conditions as of the original enquiry.
    (b) As far as possible risk purchase should be made by advertised tender.
23. in case of purchase of imported goods, appropriate Shipping clauses are incorporated. Other special conditions viz. payment terms for FOB/FAS contracts etc. should also be indicated in the enquiry.
24. all other Special conditions as per existing orders are incorporated in the tender enquiry
25. period validity of, performance guarantee whether to cover warranty period also.
26. the tender enquiry is signed for and on behalf of Governor of Uttar Pradesh.
27. any other point, which may be necessary in a particular case.

ANNEXURE-B

Instructions for preparation of Tender documents

(Ref. para 13.5)

(1) Before issuing the notice inviting bids (NIB), the procuring entity shall ensure that the bidding documents are ready for sale. If required, a committee may be constituted by the procuring entity for preparation of bidding documents.

(2) The bidding documents shall have the following sections, namely:-

(a) Notice Inviting Bids (NIB);

(b) Instruction to Bidders (ITB);

(c) Bid Data Sheet;

(d) Bid Forms;

(e) Technical Specifications and Schedule for Delivery/execution as also Qualification Criteria including the eligibility and experience of bidders

(f) Draft Contract:

(1) General Conditions of Contract

(2) Special Conditions of Contract

(3) Contract Forms

(4) Format of Integrity Pact (IP)

(g) A checklist of documents, which are to be attached with the tender

For further details and instructions, the Standard Bidding Documents issued by Government are to be referred to.

(3) The bidding documents shall include, at a minimum, the following information, namely-

(a) instructions for preparing bids;

(b) the criteria and procedures that will be applied in the ascertainment of the qualifications of bidders;

(c) the requirements as to documentary evidence or other information that must be submitted by bidder to demonstrate his qualifications;

(d) a detailed description of the subject matter of the procurement, including but not limited to, technical specifications, plans, drawings and designs as appropriate, the quantity of the goods, any incidental services to be performed, the location where the goods are to be delivered, the work is to be executed or the services are to be provided and the required time, if any;

(e) the detailed procedure for presentation, opening, examination and evaluation of bids; minimum requirement, if any, with respect to technical, quality and performance characteristics that bids must meet in order to be considered responsive; and the criteria to be used by the procuring entity in evaluation of bids and determining the successful bid, including any margin of preference and any criteria other than price to be used and the relative weight of such criteria;

(f) the terms and conditions of the procurement contract or the rate contract, to the extent they are already known to the procuring entity, and the contract or agreement form, if any, to be signed by the parties;

(g) if alternatives to the characteristics of the goods, contractual terms and conditions or other requirements set forth in the bidding documents are permitted, a statement to that effect, and a description of the manner in which alternative bids are to be evaluated and compared;

(h) if bidders are permitted to submit bids for only a portion of the goods to be procured, a description of the portion or portions for which bids may be submitted;

(i) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods themselves, such as any applicable transportation and insurance charges, customs duties and taxes;

(j) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other terms and conditions of any bid security to be provided by bidder submitting bid, and any such requirements for any security for the performance of the procurement contract or the rate contract to be provided by the bidder that enters into the procurement contract, including securities such as labour and materials bonds;

(k) the manner, place and deadline for the submission of bid;

(l) the means by which, bidders may seek clarifications of the bidding documents, and a statement as to whether the procuring entity intends, to convene a meeting of bidders;

(m) the period of time during which bids shall remain valid;

(n) the place, date and time for the opening of bids;

(o) the procedures to be followed for opening and examining bids;

(p) references to these rules and other laws and regulations directly pertinent to the procurement proceedings, provided, however, that the omission of any such reference shall not constitute grounds for appeal or give rise to liability on the part of the procuring entity;

(q) the name, functional title and address of one or more officers or employees of the procuring organisation who are authorised to communicate directly with and to receive communications directly from bidders in connection with the procurement proceedings, without the intervention of an intermediary;

(r) any commitments to be made by the bidder outside of the procurement contract, such as commitments relating to the transfer of Technology;

(s) notice of the right provided to seek redressal of grievances in relation to the procurement proceedings;

(t) if the procuring entity reserves the right to cancel bid proceedings and reject all bids without assigning any reason, a statement to that effect;

Note : The tender accepting authority/procuring entity shall record clear, logical reasons for any such action of rejection/recall of tenders on the file.

(u) any formalities that will be required once a bid has been accepted for a procurement contract or rate contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by a higher authority or Government and the

estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval; and

(v) any other requirements laid down by the procuring entity in conformity with these rules relating to the preparation and submission of bids and to other aspects of the procurement proceedings.

(4) The procuring entity shall provide the bidding documents to each bidder that responds to the invitation to bids in accordance with the procedures and requirements specified therein. If pre-qualification proceedings have been engaged in, the procuring entity shall provide a set of bidding documents to each bidder that has been pre-qualified and that pays the price, if any, charged for that document.

(5) Government has prescribed standard bidding documents for procurement of goods.

ANNEXURE – C

MODEL FORMAT FOR HANDING OVER OPENED TENDERS TO PURCHASE OFFICER

(Ref. para 13.20)

Regular Tenders which are to be opened on(date and time)….....……..... against Tender Enquiry no. ……

Total no. of regular tenders taken out from the tender box to be opened as mentioned above _____ (in figures)

.....… (in words)

Signatures

(Name and Designation)	(Name and Designation)
Date	Date
Time	Time

Received total (in figures/words) regular tender as above.

Signatures

(Name and Designation)	(Name and Designation)
Date	Date
Time	Time

CHAPTER - 14

EVALUATION OF TENDERS, FORMULATION OF PURCHASE PROPOSAL AND PLACEMENT OF CONTRACT

Evaluation of Tenders

14.1 Evaluation of tenders is one of the most significant areas of procurement process. The entire process of tender evaluation and placement of contract must be transparent. All the aspects, which are to be taken into account for evaluating the tenders including the method to be adopted for evaluation of tenders and the techniques for determining the lowest evaluated responsive tender for placement of contract are to be incorporated in the tender enquiry document in clear and comprehensive manner without any ambiguity and/or confusing stipulations therein, so that the interested tenderers can formulate their competitive offers in a meaningful manner and participate in the tendering process with confidence.

14.2 The Purchase Officer should prepare a comparative statement of quotations received in the order in which tenders were opened. This statement will have information about specifications of the goods offered by the tenderer, rates quoted (including taxes or otherwise), discount, if any, delivery schedule, earnest money deposit, validity of the offer, payment schedule etc. This action should be taken before preliminary examination of the tenders. The comparative statement so prepared should be signed by the concerned officers.

14.3 All the tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the bidding documents (based on which offers have been received) and the terms, conditions etc. stipulated by the tenderers in their tenders. No new condition should be brought in while evaluating the tenders. Similarly, no tender enquiry condition (specially the significant/essential ones) should be

overlooked while evaluating the tenders. Aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of the purchaser.

Preliminary Examination

14.4 The officer nominated for handling the tenders for initial scrutiny etc. will receive the tenders along with other documents from the tender opening officials in a manner as described under para 13.26 of chapter 13. In this context, it should be ensured that no tender is rejected by the tender opening officials at the tender opening stage; they are to open all the tenders as received and send them to the officer concerned as prescribed above.

14.5 All the tenders so received will first be scrutinised to see whether the tenders meet the basic requirements as incorporated in the bidding documents. The tenders, which do not meet the basic requirements, are to be treated as unresponsive and ignored.

The following are the important points, for which a tender may be declared as unresponsive and may be ignored, during the initial scrutiny:

(1) The tender is not in the prescribed form (where forms are prescribed)

(2) The tender is unsigned.

(3) The tenderer is not eligible, e.g. The tender enquiry condition says that the bidder has to be a registered SSI unit; but the tenderer is say, a Large Scale Unit.

(4) The tender validity period is shorter than the required period.

(5) Required EMD has not been provided.

(6) The tenderer has quoted for goods manufactured by a different firm/company without the required authority letter from the proposed manufacturer.

(7) Tenderer has not agreed to give the required performance security.

(8) The goods quoted are sub-standard, not meeting the required specification etc.

(9) Against a schedule in the List of Requirement (incorporated in the tender enquiry), the tenderer has not quoted for the entire requirement as specified in that schedule, e.g. It has been stipulated in the schedule that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has however, quoted only for supply of the equipment.

(10) The tenderer has not agreed to some essential condition(s) incorporated in the tender enquiry, e.g. Some such important essential conditions are – terms of payment, liquidated damages clause, warranty clause, dispute resolution mechanism, applicable law and any other important condition having significant bearing on the cost/utility/performance of the required goods, etc.

14.6 During the above preliminary examination, the purchaser may also find some minor infirmity and/or irregularity and/or non-conformity in some tenders. The purchaser may waive the same provided the same does not constitute any material deviation and financial impact and, also, does not prejudice or affect the ranking order of the tenderers. Wherever necessary, the purchaser is to convey his observation on such 'minor' issues (as mentioned above) to the tenderer by registered letter/speed post asking the tenderer to respond by a specified date also mentioning therein that, if the tenderer does not confirm the purchaser's view or does not respond at all by the specified date, its tender will be liable to be ignored. Depending on the outcome, such tenders are to be ignored or considered further, e.g. a tender enquiry stipulates, as an essential condition, that the tenderer,

along with its quotation, must also submit a certified copy of its latest income tax clearance certificate (ITCC). If a tenderer does not provide this document, the purchaser may ask for it with target date as above. If, the tenderer does not respond by that target date, its offer is liable to be ignored.

Conversion of Currencies

14.7 If offers have been received containing different currencies (in case of purchase of imported goods), all the quoted prices (with different currencies) are to be converted into a single currency for evaluation and comparison of offers on equitable basis. For this purpose, all such quoted prices are to be converted into Indian Rupees, as per the selling exchange rates established by a competent authority (like RBI) as prevailing on a particular date to be specified in the tender enquiry. Generally, this date is the date of tender opening.

Discrepancies between original and additional copies of a Tender

14.8 Sometimes discrepancies are also observed between the original copy and the other copies of the same tender set. In such a case, the text etc. of the original copy will prevail. Here also, this issue is to be taken up with the tenderer in the same manner as above and subsequent actions taken accordingly.

All the actions mentioned in paragraphs 14.4 to 14.8 should have the approval of the competent authority at appropriate stages.

14.9 Details of all the tenderers, which have been declared unresponsive and to be ignored as per above analysis and, also, the grounds for their becoming unresponsive are to be accurately recorded in the purchase file.

Qualification Criteria

14.10 After completing the stage as per para 14.9 above, it is to be examined whether the remaining tenderers (i.e. other than the

unresponsive tenderers) meet the required qualification criteria incorporated in the tender document. The tenderers, which do not meet the required qualification criteria are to be declared unresponsive and not to be considered further. Details of such tenderers, which do not meet the required qualification criteria are also to be recorded in the purchase file along with the grounds for their becoming unresponsive.

In case of Two Bid System, the technical acceptability of the offers are first determined and, thereafter, the Financial Bids of only the technically acceptable offers are opened for further scrutiny and processing for placement of contract. (also refer para's 13.28-13.29 of chapter 13)

Determination of responsiveness

14.11 (1) The bid evaluation committee's determination of the responsiveness of a bid should be based on the contents of the bid itself. A responsive bid is one that meets the requirements of the bidding documents without material deviation, reservation, or omission where:

(a) 'deviation' is a departure from the requirements specified in the bidding documents;

(b) 'reservation' is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding documents; and

(c) 'Omission' is the failure to submit part or all of the information or documentation required in the bidding documents.

A material deviation, reservation, or omission is one that,

(a) if accepted, would: -

(1) affect in any substantial way the scope, quality, or performance of the subject matter of procurement specified in the bidding documents; or

(2) limit in any substantial way, inconsistent with the bidding documents, the procuring entity's rights or the bidder's obligations under the proposed contract; or

(b) if rectified, would unfairly affect the competitive position of other bidders presenting responsive bids.

The bid evaluation committee shall examine the technical aspects of the bid in particular, to confirm that all requirements of bidding document have been met without any material deviation or reservation.

(2) Subject to sub para above, the procuring entity shall regard a bid as responsive if it conforms to all requirements set out in the bidding documents.

(3) The procuring entity may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents or if it contains errors or oversights that can be corrected without touching on the substance of the bid. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of bids.

Clarification of bids

14.12 (1) To assist in the examination, evaluation, comparison and post qualification of the bids, the bid evaluation committee may, at its discretion, ask any bidder for a clarification of his bid. The request for clarification and the response shall be in writing.

(2) Any clarification submitted by a bidder with regard to his bid that is not in response to a request by the committee, shall not be considered.

(3) No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of

arithmetic errors discovered by the committee in the evaluation of the financial bids.

(4) No substantive change to qualification information or to a submission, including changes aimed at making an unqualified bidder qualified or an unresponsive submission responsive, shall be sought, offered or permitted.

(5) No negotiations shall take place except in case of first stage of two stage bidding and single source procurement between the procuring entity and a bidder with respect to qualification information or submissions, nor shall any change in price be made pursuant to a clarification that is sought under this rule.

(6) All communications generated under this rule shall be included in the record of the procurement proceedings.

Non-material Non-conformities

14.13 (1) Provided that a bid is substantially responsive, the bid evaluation committee may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.

(2) Provided that a bid is substantially responsive, the bid evaluation committee may request the bidder to submit the necessary information or documentation like audited statement of accounts, VAT clearance certificate, PAN, etc. within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the bidder to comply with the request may result in the rejection of its bid.

(3) Provided that a bid is substantially responsive, the bid evaluation committee shall rectify nonmaterial nonconformities or

omissions on the basis of the information or documentation received from the bidder.

Exclusion of bids

14.14 (1) A procuring entity shall exclude a bid if-

(a) the bidder is not qualified in terms of qualifications set out in the bidding documents;

(b) the bid materially departs from the requirements specified in the bidding documents or it contains false information;

(c) the bidder submitting the bid, his agent or any one acting on his behalf, gave or agreed to give, to any officer or employee of the procuring entity or other Government authority a gratification in any form, or any other thing of value, so as to unduly influence the procurement process.

(d) a bidder, in the opinion of the procuring entity, has a conflict of interest materially affecting fair competition.

(2) A bid shall be excluded as soon as the cause for its exclusion is discovered.

(3) Every decision of a procuring entity to exclude a bid shall be for reasons to be recorded in writing.

(4) Every decision of the procuring entity under sub para (3) shall be communicated to the concerned bidder in writing and also published on the State Public Procurement Portal/Departmental Website.

Evaluation of Technical bids in case of two part bids

14.15 (1) The criteria fixed for evaluation of Technical bids shall be clearly mentioned in the bidding documents so as to keep transparency in selection process. The criteria once fixed for evaluation of technical bids shall not be changed or relaxed.

(2) Techno-commercial qualifications of the bidders shall be evaluated on the basis of the weightages of marks assigned or minimum

achievements fixed in the bidding documents for various criteria of qualifications in the area of professional, technical, financial, managerial competence, etc. like number of years of experience of the bidder in the subject matter of procurement, satisfactorily completion of similar contracts in past certain years, each valuing not less than prescribed percentage of the value of subject matter of procurement, financial turnover of the bidder in past certain years in relation to the value of subject matter of procurement, the value of works in hand of the bidder at the time of submitting the bid relative to the value of subject matter of procurement, etc.

(3) Bidders securing prescribed minimum percent of marks or have fulfilled minimum achievement norms may be considered to have technically qualified.

(4) The number of tenderers qualified in technical evaluation should not generally be less than 3 (three). If the number is less than 3 (three) and it is considered necessary by the procuring entity to continue with the bid process, reasons shall be recorded in writing and included in the record of the procurement proceedings.

(5) The bidders which qualified in the technical evaluation shall be informed in writing about the date, time and place of opening of their financial bids. This date should generally be not later than 15 (fifteen) days from the date of issue of letter.

Correction of arithmetic errors in Financial Bids

14.16 If a bid is substantially responsive, the bid evaluation committee shall correct arithmetical errors on the following basis, namely:

(a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the bid evaluation committee there is

an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected accordingly;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

If there is such discrepancy in an offer, the same is to be conveyed to the tenderer with target date on the above lines and if the tenderer does not agree to the observation of the purchaser, the tender is liable to be ignored.

Evaluation and Ranking of Financial Bids

14.17 (1) Depending on the terms of delivery and the projected requirement, all the applicable components of the costs, as quoted in the responsive tenders, are to be added to work out the ultimate evaluated costs of the tenders. The evaluation is also to include applicable taxes, duties etc. in the tender prices. Further, if the tender document provides for any price preference and/or purchase preference for SSI/PSU etc. the same is also to be kept in view while evaluating such tenders.

(2) Sometimes, while purchasing sophisticated and costly equipment, machinery, etc. the purchase organisation also gives special importance to factors like high quality performance, environmental friendly features, low running cost, low maintenance cost, etc. To take care of the same, relevant details are to be incorporated in the tender document and the criteria adopted to assess the benefit of such features while

evaluating the offers are also to be clearly stipulated in the tender document so that the tenderers are aware of the same and quote accordingly. While evaluating such offers, these aspects are also to be taken into account. Such details, whenever considered necessary, should be evolved by competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in the same.

(3) After completing the entire evaluation process for the responsive tenders on equitable basis as above, these are to be entered into a ranking statement in ascending order of the evaluated prices (like L1, L2, L3 etc.) along with other relevant details, so that a clear picture of their standing as well as comparative financial impact is available at a glance.

(4) If the schedule of requirements contains more than one schedule, then offers for each schedule are to be evaluated and ranked separately in a self contained manner on above lines. In case a tenderer offers special discount if more than one schedule is ordered on it (and if the same is permissible as per terms of the tender document), the same should also be taken note of in the ranking statement.

Price / Purchase preference in evaluation

14.18 **Price and / or Purchase preference notified by Government as per provisions of Para 3.2 of chapter 3 and as mentioned in the tender documents shall be considered in the evaluation of Financial Bids.**

Reasonableness of Price

14.19 Before placing the contract on the lowest evaluated responsive tender (L1) the purchase organisation is to ensure that the price to be paid is reasonable. The broad guidelines for judging the reasonableness of price are as under:

(1) Last purchase price of same (or, in its absence, similar) goods
(2) Current market price of sale (or, in its absence, similar) goods
(3) Price of raw materials, which go into the production of the goods
(4) Receipt of competitive offers from different sources
(5) Quantity involved
(6) Terms of delivery
(7) Period of delivery
(8) Cost analysis (material cost, production cost, over-heads, profit margin)

Note : Price paid in an emergency purchase or purchase price of goods offered by a tenderer through 'distress sale' (i.e. when the tenderer clears its excess stock at throw away prices to avoid further inventory carrying cost etc.) are not accurate guidelines for future use.

Price not Reasonable

14.20 If L1's price is not reasonable, then, in the first place, the purchase organisation is to review its own data and details to recheck whether the reasonable price so arrived is correct or not. If it is correct, the purchase organisation may, strictly as an exception, negotiate the price only with the lowest evaluated responsive tender (L1) in an attempt to bring down the same.

If L1 reduces the price to the desired (reasonable) level, contract may be placed on it but if it does not agree, then further action like re-tendering etc. may be decided by the purchase organisation depending on the merits of the case.

Lack of Competition

14.21 Sometimes the purchase organisation may not receive sufficient number of tenders. A situation may also arise where, after analysing the tenders, the purchase organisation ends up with one responsive

tenderer. In such situations, the purchase organisation is first to check whether, while floating/issuing the tender enquiry, all necessary requirements like standard tender enquiry conditions, industry friendly specification, wide publicity, sufficient time for formulation of tenders, qualification criteria etc. were fulfilled. If not, the tender is to be re-issued/re-floated after rectifying the deficiencies.

(1) However, if after scrutiny it is found that all such aspects were fully taken care of, the contract for a tender value does not exceed Rs. 50 (fifty) lac and:

(a) the price quoted by the bidder is assessed to be reasonable;

(b) the bid is unconditional and complete in all respects;

(c) there is no obvious indicators of cartelisation amongst bidders,

the bid evaluation committee shall prepare a justification note for the approval of the next higher authority of the procuring entity, who shall decide as to whether to sanction the single bid or re-invite bids after recording reasons.

(2) In case of contract for estimated value exceeding Rs. 50 (fifty) lac but not exceeding Rs. 5 (five) crore, the tender should be refloated and if the purchase organisation again ends up with only one responsive tender, the contract may be placed on that tenderer, after ensuring the aforesaid procedure.

(3) Lastly for contracts of estimated value exceeding Rs. 5 (five) crore the tender should be retendered second time and if it also results in only one responsive tender, contract may be finalised on the same basis as above.

Provided that incase the procuring entity is the administrative department of Government, approval of the next higher authority will not be required.

Procuring entity's right to accept or reject any or all bids

14.22 The Procuring entity reserves the right to accept or reject any bid, to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the bidders. Reasons for doing so shall be recorded in writing in the purchase file.

Dividing the Quantity

14.23 As per standard procedure, each schedule of requirement incorporated in the tender enquiry document is to be covered on the lowest responsive tenderer for that schedule without dividing the same. The tenderer who does not quote for the complete schedule as required is normally to be treated as unresponsive and ignored. However, there may be special occasions of purchase of very large quantities of goods which are beyond the capacity of a single tenderer and the lowest responsive tenderer is unable to take the load of the entire quantity. In such cases, the remaining quantity may be ordered on the second lowest responsive tenderer (L2) at the rates offered by the lowest responsive tenders (L1), as far as feasible and for this purpose negotiation may be held with the above tenderer (viz. L2). In such cases, it may also become necessary to divide the requirement under a schedule by placing multiple contracts for part quantities on more than 2 (two) responsive tenderers. Such eventuality should normally be foreseen and provided for in the notice inviting tenders. The formula proposed to be adopted for allocation of orders to multiple (responsive) tenderers should be clearly brought out in the notice inviting tenders. The splitting of order by purchasing organisation should be an exception rather than a rule. (also refer paras 14.30(3) (d) and(e))

Tolerance Clause

14.24 To take care of any change in the requirement during the period starting from issue of tender enquiry till placement of the contract, a

plus/minus tolerance clause is incorporated in the tender document, reserving purchaser's right to increase or decrease the quantity of the required goods upto that limit without any change in the terms and conditions and prices quoted by the tenderers. While awarding the contract, the quantity ordered may be increased or decreased, if necessary, within the prescribed plus/minus tolerance limit.

Repeat orders for extra items or additional quantities may be placed, if provided in the bidding document, on the rates and conditions given in the bid, provided the original order was given after inviting open competitive bids. Delivery / completion period may also be proportionately increased. The limits of repeat order shall be 20% (twenty percent) of the value of goods originally tendered and finalised contract.

14.25 The tolerance limit should be reasonable. Higher the tolerance limit, more is the uncertainty for the tenderers in formulating their prices and thus more is the chance of loading on the prices quoted by the tenderers to take care of such uncertainties. Generally, the tolerance limit should not be more than plus/minus 20 (twenty) percent.

14.26 The practice of incorporating in the tender document a tolerance clause reserving purchaser's right to increase the ordered quantity upto a specified percentage with same terms and conditions and prices during the currency of the contract creates much more uncertainty for the tenderers due to such long stretch of time. In such cases, the tenderers tend to put much higher cushion in their quoted prices, which is not a healthy sign. Therefore, generally such tolerance clause running through the tenure of the contract should not be incorporated in the tender document.

14.27 If the Procuring entity does not procure any of the tendered quantities of subject matter of procurement or procures less than the

quantity indicated in the bid documents due to changed circumstances, the bidder shall not be entitled to any claim / compensation.

Acceptance of the successful bid and notification of award

14.28 (1) The procuring entity shall award the contract to the bidder whose offer has been determined to be the lowest or most advantageous bid in accordance with the evaluation criteria set out in the bidding documents, provided that the bidder has been determined to be qualified to perform the contract satisfactorily on the basis of qualification criteria fixed for the bidders in the subject matter of procurement.

(2) The bid evaluation committee after due consideration of the bids received, their conditions, financial implications, seeing samples, test reports, if any, etc., shall recommend regarding acceptance or rejection of the bid.

(3) Decision on bids shall be taken within original validity period of offers and within the time period allowed to an authority of procuring entity for taking decision.

(4) As soon as a bid is accepted by the competent authority its written intimation should be sent to the concerned bidder by registered post/speed post and e-mail (if available). If the issuance of formal order is likely to take time, a Letter of Intent (LOI) may be sent in the meanwhile. In the same intimation the bidder may be asked to execute an agreement in the format given in the bidding document on a non judicial stamp of requisite value and deposit the amount of prescribed performance security deposit within 15 (fifteen) days from the date of issue of notification of award/letter of intent.

(5) It should also be made known to the successful tenderer, that incase he does not furnish the required performance security or does not execute the agreement within the stipulated target dates, such

noncompliance will constitute sufficient ground for forfeiture of his EMD and processing the case for further action against him (the successful tenderer).

(6) The acceptance of an offer is complete as soon as the letter of communication is posted and/ or sent by email (if available) to the address of the bidder given in the bidding document.

(7) The bid security of the bidders whose bids could not be accepted shall be refunded soon after the agreement with the successful bidder is executed and his performance security deposit obtained.

Publication of award of contract

14.29 As soon as the procuring entity, with the approval of the competent authority, decides to accept a bid, it shall communicate that fact to all participating bidders and also publish the decision on the website of the department as well as the State Public Procurement Portal/Departmental Website.

The details of all the contracts/purchases made above a threshold value, as may be prescribed should be posted on the website of concerned department.

Restriction on negotiations

14.30 (1) In case of single source procurement, the negotiations will be conducted in accordance with para 8.8 of chapter 8.

(2) To the extent possible, no negotiations shall be conducted after the pre-bid stage. All clarifications needed to be sought shall be sought in the pre-bid itself. The bidding documents shall have a copy of the contract enclosed and the same shall not be altered.

(3) Negotiations may, however, be undertaken only with the lowest tenderer (L1) under the following circumstances :-

(a) There should be no post-tender negotiations with L-1, except in certain exceptional situations. Such exceptional

situations would include, procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.

(b) In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re- tender for the entire requirement would delay the availability of the item, thus jeopardising the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through a re-tender, following the normal tendering process.

(c) Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations. In no case should the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.

(d) If after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable

of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable. In cases where the department decides in advance to have more than one source of supply (due to critical or vital nature of the item) pre-disclosing the ratio of splitting the supply in the tender itself must be followed scrupulously.

(e) Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

(4) In case L-1 backs out, there should be a re-tender.

Note -(1) Subject to aforesaid provisions, the bid evaluation committee (BEC) shall have full powers to undertake negotiations. Detailed reasons and results of negotiations shall be recorded in the proceedings.

Note -(2) Negotiations will not make the original offer made by the bidder inoperative. The bid evaluation committee will have option to consider the original offer in case the bidder decides to increase rates originally tendered or imposes new terms and conditions.

Signing of Contract agreement and entry into force of procurement contract

14.31 (1) Unless a written procurement contract and / or approval by another authority is/are required, a procurement contract in accordance with the terms and conditions of the successful submission enters into force when the notice of acceptance is dispatched to the bidder

concerned, provided that the notice is dispatched while the submission is still in effect.

(2) The procuring entity and the bidder concerned shall sign the procurement contract, normally within 15 (fifteen) days from the date of notification of award / letter of intent;

(3) Unless the bidding documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract enters into force when the contract is signed by the bidder concerned and by the procuring entity. Between the time when the notice of acceptance is dispatched to the bidder concerned and the entry into force of the procurement contract, neither the procuring entity nor that bidder shall take any action that interferes with the entry into force of the procurement contract or with its performance.

(4) Where the bidding documents stipulate that the procurement contract is subject to approval by another competent authority, the procurement contract shall not enter into force before the approval is given. The bidding documents shall specify the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval. A failure to obtain the approval within the time specified in the bidding documents shall not extend the period of effectiveness of submissions specified in the bidding documents or the period of effectiveness of the bid security, unless extended.

(5) If the bidder whose bid has been accepted fails to sign any written procurement contract as required or fails to provide required performance security for the contract, the procuring entity should cancel the procurement process.

Cost of execution of contract agreement

14.32 The bidder shall be asked to execute the agreement bond on a non-judicial stamp paper of prescribed value at his cost.

Confidentiality

14.33 (1) Subject to the provisions of any law for the time being in force providing for disclosure of information, a procuring entity shall not disclose any information if such disclosure, in its opinion, is likely to -

(a) impede enforcement of any law;

(b) affect the security or strategic interests of India;

(c) affect the intellectual property rights or legitimate commercial interests of bidders;

(d) affect the legitimate commercial interests of the procuring entity in situations that may include when the procurement relates to a project in which the procuring entity is to make a competitive bid, or the intellectual property rights of the procuring entity.

(2) Except as otherwise provided in the rules, a procuring entity shall treat all communications with bidders related to the procurement process in such manner as to avoid their disclosure to competing bidders or to any other person not authorised to have access to such information.

(3) The procuring entity may impose on bidders and sub-contractors, if there are any, for fulfilling the terms of the procurement contract, conditions aimed at protecting information, the disclosure of which violates sub para (1).

(4) In procurement involving classified information, the procuring entity may:

(a) impose on bidders requirements aimed at protecting classified information; and

(b) demand that bidders ensure that their sub-contractors comply with requirements aimed at protecting classified information.

Cancellation of procurement process

14.34 (1) A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by it,

(a) at any time prior to the acceptance of the successful bid; or

(b) after the successful bid is accepted in accordance with sub para (4).

(2) The procuring entity shall not open any bids or proposals after taking a decision to cancel the procurement and shall return such unopened bids or proposals.

(3) The decision of the procuring entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders that participated in the procurement process.

(4) If the bidder whose bid has been accepted as successful fails to sign any written procurement contract as required, or fails to provide any required performance security for the contract, the procuring entity may cancel the procurement process.

(5) A procurement process, once cancelled, shall not be reopened. However, this shall not prevent a procuring entity from initiating a new procurement process for the same procurement, if required.

Tenderer's Right to question Purchaser

14.35 A tenderer shall have the right to be heard in case it feels that proper procurement process is not being followed and/or his tender has been rejected wrongly. The tenderer is to be permitted to send his representation in writing, which is to be examined by appropriate administrative authority of the purchasing department. The detailed general process in this regard shall be as given in chapter-17.

However, to discourage frivolous complaints, a non-refundable fee of suitable amount (linked to the value of the purchase) shall be charged as may be prescribed.

Extension of Tender Validity Period

14.36 (1) The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done within the original tender validity period. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for longer period entails the risk of getting higher prices from the tenderers. Generally, the validity period should not be more than three months from the date of tender opening.

(2) If however, due to some exceptional and unforeseen reasons, the purchase organisation is unable to decide placement of the contract within the original validity period, it should request, before expiry of the original validity period, all the responsive tenderers to extend their tenders upto a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request and this will not tantamount to forfeiture of its EMD. The tenderers, who agree to extend the validity, are to do so without changing any terms, conditions etc. of their original tenders. (also refer para 9.9 of chapter 9)

CHAPTER-15

E – PROCUREMENT

Introduction

15.1 E-procurement is the combined use of electronic information and communications technology (ICT) in order to enhance the links between purchaser and supplier, and with other value chain partners, and thereby to improve external and internal procurement process. E-Procurement is a key component of e-business and e-commerce.

15.2 Purchase of goods through electronic mode of interface with tenderers and IT enabled management of the entire procurement process (notice inviting tenders, supply of tender documents, receipt of bids, evaluation of bids, award of contract, and execution of contract through systematic enforcement of its various clauses and tracking of claims, counter-claims and payments) improves efficiency and transparency, reduces the procurement cycle and cuts down transaction cost. Departments are required to fix appropriate cut-off points in terms of the size of procurement to switch over to e-procurement. The departments have already been directed to publicise all their tenders on their websites as the first step towards e-procurement. The departments are required to proactively engage themselves in articulating user needs in the development of IT systems for e-procurement.

15.3 Security of data in e-procurement systems is critical. The system must contain robust mechanisms for identifying and authenticating the user so that the supplier knows that he can fulfill any orders placed. Both parties must have complete confidence in the security infrastructure of any e-procurement system.

However, as all the tendering firms/companies may not have the facility of transmitting their quotations through e-mail, the departments should allow the receipt of quotations through hard copies

as well as by e-mail. The closing date and time for receipt of tenders should be identical for both types of tenders.

Benefits of e-procurement

15.4 (1) Engaging in the e-procurement process brings potential benefits to suppliers. These include:

(a) Time and cost savings in re-inputting orders

(b) Reduction in errors, e.g. from re-inputting orders, deliveries, returns, invoices and payments

(c) Reduced transaction costs and cycle times

(d) Holding less stock as a result of more efficient communications with purchasers i.e. real time sales data information for use in planning and forecasting.

(e) Improved supplier performance by sharing supplier measurement information.

(f) Faster payment.

(g) Improved management information.

(2) The resulting benefits to purchasers will be:

(a) Reduced transaction costs and cycle times

(b) Possibility of developing Vendor Managed Inventory

(c) Improvements in 'Just in Time' deliveries

(d) More accurate deliveries due to reduced input order errors by suppliers

(e) Shared performance measurement data which encourages improved supplier performance.

(f) Potential for less expediting by the purchaser as the supplier acknowledges orders by exception which automatically updates the purchaser's system.

(g) Reduced stock due to shared sales/forecast information

15.5 Departments while going for e-procurement, should follow the guidelines on Quality requirements of e-procurement systems issued by the Department of Electronics and Information Technology, Ministry of Communications and Information Technology, Government of India as also the latest provisions of Information Technology Act, 2000 and CVC guidelines.

CHAPTER - 16

RUNNING CONTRACT AND RATE CONTRACT

16.1 All Stores of standard types other than those required in small quantities only, which are in common and regular demand and the prices of which are not subject to appreciable market fluctuations, may be purchased on the basis of a Rate or Running Contract, whichever is most suited to the circumstances of each particular case.

Running Contract

16.2 In the case of articles which cannot be stocked in the departmental store with safety and convenience, the system of Running Contracts should be adopted. A Running Contract is a contract for the supply of an approximate quantity of goods at a specified price during a certain period. The approximate requirements of a number of indenters for the period in question are combined by the department and the contract provides that any of these indenters may demand his requirements at any time or at specified periods during the currency of the contract either direct from the firm or by indent on the department. In terms of the conditions governing these contracts the purchaser has the right to take a certain quantity (usually 25 (twenty five) percent) over or below the approximate quantity mentioned in the contract. Drawals against these contracts should be carefully watched and the guaranteed quantity (usually 75 (seventy five) percent of the contractual quantity) taken before the expiry of contract.

16.3 Running contracts may be settled by the competent authorities for the supply of articles at intervals during a whole year or a part thereof. Dietary articles, firewood, charcoal, raw materials for Ayurvedic medicines etc. come under the group. In settling running

contracts all the rules relating to the ordinary contracts like invitation of tenders, earnest money, etc. should be followed, and in addition special provision should be made to safeguard Government interests and to ensure regular supplies. It is important that for all running contracts tenders with earnest money should be invited irrespective of the amount involved and that performance security is also required to be furnished by the contractor(s).

Rate Contract

16.4 A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services, if any) at specified price and terms and conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor any minimum drawal is guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser is entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during its validity period that supply order becomes a valid and binding contract.

16.5 The State Purchase Organisation (SPO) shall conclude Rate Contracts with the registered suppliers, for goods of standard types, which are identified as common user items and are needed on recurring basis by various Government departments. The SPO will furnish and update all the relevant details of the Rate Contracts on its website. The departments should operate those Rate Contracts to the maximum extent possible. In case a department directly procures rate contracted goods from the suppliers, the prices to be paid for such goods shall not exceed those stipulated in the Rate Contract and the other salient terms

and conditions of the purchase should be in line with those specified in the Rate Contract. The department may make its own arrangement for inspection and testing of such goods, where required. The SPO should post the descriptions, specifications, prices and other salient details of all the rate contracted goods, appropriately updated, on its web site for use by the procuring departments.

16.6 Goods for which Rate Contracts are to be concluded by State Purchase Organisation.

(1) Commonly used goods needed on recurring basis by various departments.

(2) Goods for which prices are likely to be stable or where Rate Contracts could be finalised with provision of price variations to account for fluctuation of market rates of raw materials etc.

(3) Goods for which Rate Contract is convenient to operate and annual drawals are economical.

Note: (1) In case of goods of low value and which are required by the users in very small quantities, Rate Contracts may not be concluded.

Note: (2) Rate Contract may not be concluded for the scarce / critical/ perpetually short supply goods.

Bringing more and more common user items on the Rate Contract

16.7 The State Purchase Organisation(SPO) shall bring more and more common user items on Rate Contracts. For this purpose, regular interactions should be held by SPO with the trade and the user departments. There shall be a Standing Review Committee (SRC), coordinated by the SPO consisting of representatives of major indenting departments, trade organisations, prospective suppliers, etc., to consider bringing new items on Rate Contracts.

Rate Contracts on the basis of discounts on Net Dealer Price

16.8 State Purchase organisation will conclude Rate Contracts for Automobiles, Machine Tools, Information Technology Products, OEM and Ancillary Spares and other such products where the design feature, performance, parameters, etc. of such products/goods differ significantly among the products of different manufacturers and even between different models of the same manufacturer and where equitable comparison of prices of such products is not feasible. Such Rate Contracts are to be concluded on discount on Net Dealer Price (NDP) basis.

Period of Rate Contract

16.9 The period of a Rate Contract should normally be one year for stable technology products. However, in special cases, shorter or longer period may be considered. As far as possible, termination period of Rate Contracts should be fixed in such a way as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts. SPO should also ensure that the Rate Contract remain available without any break.

Criteria for Award of Rate Contract

16.10 Rate Contracts shall be awarded to the firms who are registered for the goods in question and fulfill the laid down eligibility and qualification criteria including availability of ISI mark, service centers across the State etc. Suitable stipulations are to be incorporated in the tender enquiry documents to this effect. In respect of new items being brought on Rate Contract for the first time where there is no registered supplier (for the subject items), the requirement of registration can be relaxed with the approval of competent authority. The award of such Rate Contracts will, however, be subject to the suppliers' satisfactory technical and

financial capability.

16.11 Some of the tenderers (who are otherwise registered for the subject goods) may also be holding current Rate Contracts and/or held past Rate Contracts for the required goods. Their performance against such earlier/current Rate Contracts shall be critically reviewed before they are considered for award of new Rate Contracts. Specific performance and achievement criteria as on a selected cut-off date is to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their tenders) to enable the purchaser to judge their performance and achievement against the past/current Rate Contracts. These criteria are to be evolved and decided by the purchase department during procurement planning stage for incorporation in the corresponding tender enquiry documents.

Special Conditions applicable for Rate Contracts

16.12 Some conditions of Rate Contract differ from the usual conditions applicable for adhoc contracts. Some such important special conditions of Rate Contract are given below:

(1) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawal may be mentioned without any commitment.

(2) The State Purchase Organisation reserves the right to conclude more than one Rate Contract for the same item.

(3) The State Purchase Organisation as well as the supplier may withdraw the Rate Contract by serving suitable notice to each other. The prescribed notice period is generally 30 (thirty) days.

(4) The State Purchase Organisation has the option to renegotiate

the price with the rate contract holders.

(5) In case of emergency, the Purchase department may purchase the same item through adhoc contract with a new supplier.

(6) Usually, the terms of delivery in Rate Contracts are FOR destination anywhere in Uttar Pradesh. This is so, because the Rate Contracts concluded by State Purchase Organisation are to take care of the users spread all over the state.

(7) Supply orders, incorporating definite quantity of goods to be supplied along with all other required conditions following the Rate Contract terms, are to be issued for obtaining supplies through the rate contract.

(8) The purchaser and the authorised users of the Rate Contract are entitled to place supply orders upto the last day of the validity of the Rate Contract and, though supplies against such supply orders will be effected beyond the validity period of the Rate Contract, all such supplies will be guided by the terms and conditions of the Rate Contract.

(9) The rate contract will be guided by 'Fall Clause' (refer para 16.19 of this chapter).

Parallel Rate Contracts

16.13 In case it is observed that a single supplier does not have enough capacity to cater to the entire demand of an item, the Rate Contract issuing authority may enter into more than one Rate Contracts with different suppliers for the same item. Such Rate Contracts are known as Parallel Rate Contracts.

Conclusion of Rate Contracts including Parallel Rate Contracts

16.14 Techniques for conclusion of Rate Contract are basically identical to that of adhoc contract (quantity contract), as discussed in Chapter 13. Identical tender documents may be utilized for conclusion of Rate Contracts subject to inclusion therein the special terms and conditions as applicable for Rate Contracts. In the normal course, the Rate Contract is to be awarded to the lowest responsive tenderer (L1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc. it may become necessary to award parallel Rate Contracts also. For this purpose, a reasonable price band above the L1's price is to be decided and parallel Rate Contracts awarded to the responsive tenderers falling within that price band. Efforts should be made to conclude parallel Rate Contracts with suppliers located in different parts of the State. For the sake of transparency and to avoid any criticism, all such Rate Contracts are to be issued simultaneously.

Price Negotiation/Counter-Offer

16.15 Price Negotiation with the tenderers should be severely discouraged. However, in case the price quoted by the lowest responsive tenderer (L1) is not reasonable and acceptable, the price may be negotiated with L1 only and, if it reduces the price to the desired level, Rate Contract may be concluded with L1.

16.16 There may be a situation, where parallel Rate Contracts are needed, but though the price of L1 is reasonable, the number of responsive tenderers falling within the reasonable price band is inadequate. To take care of such situation, the SPO may resort to negotiation and counter offering as indicated below:

To start with, the Rate Contract may be awarded to L1 tenderer. Then the price of L1 is to be counter offered to the higher quoting responsive tenderers under intimation to L1 asking them to send their revised tenders in sealed covers to be opened in public at a specified place, date and time (as per the standard procedure). L1 may be specifically informed that it may, if it so desires, reduce its price and send its revised tender accordingly as above. The tenderers who accept the counter offer rate or rate lower than that are to be awarded parallel Rate Contracts. If L1 lowers its rate in its revised offer, same may also be accepted with effect from that date and its Rate Contract amended accordingly.

16.17 There may also be a situation where parallel Rate Contracts are necessary, but even the price of the lowest responsive tenderer (L1) is not reasonable. In that case, price negotiation may be conducted with L1 in the first instance. If L1 agrees to bring down the price to the desired level, Rate Contract may be concluded with it and that price counter offered to other responsive tenderers under intimation to L1 for further action in identical manner as indicated in the above paragraph. If, however, L1 does not agree to reduce its price in the first instance itself, then the price, which has been decided as reasonable may be counter offered to all the responsive tenderers (including L1) for further action on above lines.

Cartel Formation / Pool Rates

16.18 Sometimes a group of tenderers quote identical rates against a Rate Contract tender. Such Pool/Cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Registrar of Companies,

Competition Commission of India, NSIC etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. Departments may also bring such unhealthy practices to the notice of the concerned trade associations like FICCI, ASOCHAM, NSIC, etc. requesting them, *inter alia*, to take suitable strong actions against such firms. Departments may also encourage new firms/companies to get themselves registered for the subject goods to break the monopolistic attitude of the firms/companies forming cartel.

Fall Clause

16.19 Fall clause is a price safety mechanism in Rate Contracts. The fall clause provides that if the Rate Contract holder reduces its price or sells or even offers to sell the rate contracted goods following conditions of sale similar to those of the Rate Contract, at a price lower than the Rate Contract price, to any person or organisation during the currency of the Rate Contract, the Rate Contract price will be automatically reduced with effect from that date for all the subsequent supplies under the Rate Contract and the Rate Contract amended accordingly. Other parallel Rate Contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 15 (fifteen) days time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel Rate Contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the Rate Contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. A model format of Fall Clause is available at Annexure-A to this chapter.

16.20 It is however, very much necessary that the purchase departments keep special watch on the performance of such Rate Contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriate action should be taken against them including deregistering them, suspending business deals with them, etc.

Performance Security for Rate Contract

16.21 Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel Rate Contracts to be issued for an item, the department shall consider obtaining performance security of reasonable amount from the Rate Contract holders. A suitable clause to this effect is to be incorporated in the tender enquiry documents. Performance Security shall, however, not be demanded in the supply orders issued against Rate Contracts.

Placement of Supply Orders for Rate Contract

16.22 Supplies are to be obtained against a Rate Contract by placing supply order on the rate contracted firm containing the quantity of the goods to be supplied and incorporating the prices and other relevant terms and conditions of the Rate Contract. The officials placing such supply orders should be duly competent and authorised to do so. Copies of supply order are to be endorsed to all concerned. A supply order should generally contain the following important details:

(1) Rate Contract No. and date.

(2) Quantity (where there is more than one consignee, the quantity to be dispatched to each consignee is to be indicated).

(3) Price.

(4) Date of Delivery by which supplies are required.

(In the supply order, a definite delivery date based on the delivery period stipulated in the Rate Contract is to be provided).

(5) Full address of the purchase department along with Telephone. No., Fax No. and e- mail address.

(6) Complete and correct designation and full postal address of the consignee(s)/goods receiving officer(s) along with Telephone No(s), Fax No(s) and e-mail addresses.

(7) Nearest Railway Siding (NRS) of the consignee(s).

(8) Dispatch instructions

(9) Designation and address of the inspecting officer.

(10) Designation and address of the paying authority to whom the bills are to be raised by the supplier

Renewal of Rate Contracts

16.23 It should be ensured that new Rate Contracts are made operative right after the expiry of the existing Rate Contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new Rate Contracts due to some special reasons, timely steps are to be taken to extend the existing Rate Contracts with same terms, conditions etc. for a suitable period, with the consent of the Rate Contracts holders. Rate Contracts of the firms/companies, who do not agree to such extension are to be left out. Period of such extension should not be more than 3 (three) months. Also, while extending the existing Rate Contracts, it shall be ensured that the price trend is not lower.

Revocation / Cancellation of Rate Contracts

16.24 The Rate Contract(RC) being a standing offer can be revoked by the contractor as well as short-closed by the purchaser at any time during the currency of the rate contract through prescribed notice. The standard formats of notices are given in Annexures-B and C to this chapter. Since, the RC is a standing offer and is merely a document embodying various terms of the standing offer made by the contractor for acceptance by the purchaser, either party namely; the contractor/purchaser can legally revoke/cancel the rate contract at any time during the currency of the rate contract giving a notice of 45 (forty five) days. The revocation of the rate contract on the part of the contractor shall take effect 45 (forty five) days from the date of communication of revocation is received by the purchaser. The cancellation of the RC by the purchaser shall take effect 45 (forty five) days from the date of issue of letter notifying short-closure. The contractor shall not accept any supply orders after cancellation of the rate contract.

Purchase of Computers and Software

16.25 Purchase of computers, their accessories and the software shall be governed by the orders issued in this behalf by Government in I.T. and Electronics department from time to time.

Rate Contracts concluded by DGS&D / other central organisations

16.26 A department may purchase articles through a DGS&D RC or any other central organisations' RC when DI RC is not available for those articles. Detailed instructions regarding declaration of State Government departments/offices as Direct Demanding Officers (DDO) and their inclusion as indenter in the list of DDOs for DGS&D RC as per procedure laid down in DGS&D Manual shall be issued by Government.

ANNEXURE-A

Model Format of Fall Clause

(Ref. para 16.19)

"The price charged for the goods supplied under the contract by the contractor shall in no event exceed the lowest price at which the contractor sells the goods of identical description to any other person during the period of the contract.

If at any time, during the said period, the contractor reduces the sale price of such goods or sells such goods to any other person at a price lower than the price chargeable under the contract, he shall forthwith notify such reduction or sale to the Commissioner and Director of Industries/SPO/Purchase Organisation and price payable under the contract for the goods supplied after the date of coming into force of such reduction or sale shall stand correspondingly reduced.

The above stipulation will not however apply to:

(1) Exports by the contractor.

(2) Sale of goods as original equipment at price lower than the price charged for normal replacement.

The contractor shall furnish certificate as and when and in the manner required by the Commissioner and Director of Industries/ SPO/Purchase Organisation to the effect that the provisions of this clause have been duly complied with in respect of supplies made or billed for up to the date of the certificate."

ANNEXURE-B

Model Format of Notice cum Cancellation Letter

(Ref. para 16.24)

(Applicable where the State Purchase Organisation decides to short close the Rate Contract)

No…….…….

Date ……..

Office of the ……

……..

To

M/s……

……..

Sub: Rate Contract (RC) for supply of ……..... ….. …… …… .....…. .Valid up to…….....……

Dear Sir,

(a) It has been observed that there has been a notable downfall in the prices after conclusion of the RC and that the stores are now obtainable on much lower rates (if it is possible to indicate a definite price at which the stores are now obtainable, the same can be counter offered to the RC holder for their acceptance).

(b) The quantity of goods supplied against the RC so far have not been to the requisite standard in as much as there have been complaints from the user Departments in this regard, and

(c) Your conduct in performance of the RC has not been satisfactory in respect of

(d) Any other reasons which can be indicated.

Note: SPO has to assign any one or the other reasons as relevant.

2. In view of the above, it has been decided to short-close the subject Rate Contract after……(allow 45 (forty five) days from the

date of issue of the letter). The Rate Contract may be treated as cancelled/withdrawn after ……..(date given for the withdrawal of the RC). Any order placed by the Indenting Officer after the expiry of the notice period shall not be executed by you.

Yours faithfully

For and on behalf of the SPO
named in the Schedule.

ANNEXURE-C

Model Format of Revocation cum Cancellation Letter

(Ref. para 16.24)

(Applicable where the Rate Contract is revoked by the Contractor)

To

The ……

……

Sub: Rate Contract for supply of ……..... valid up to ……....……

Sir,

It is not possible for us to continue to supply against the subject Rate Contract for the following reasons:-

(a)

(b)

In terms of para 16.24 of Uttar Pradesh Procurement Manual, I/We hereby revoke the Rate Contract which will take effect 45 (forty five) days from the date of receipt of this communication by your office. Formal Cancellation letter may be issued at the earliest.

Yours faithfully

(M/s…….....……..…….)

Note for State Purchase Organisation (SPO):-

The SPO is expected to issue the cancellation letter counting 45 (forty five) days from the date revocation letter is received in his office stating that:

"In view of your letter dated ……the Rate Contract is hereby treated as short-closed/withdrawn with effect from……

All orders placed prior to this cancellation are, however, to be executed at the earliest."

CHAPTER - 17

Grievance Redressal During Procurement Process

Submission of Application

17.1 If any bidder or prospective bidder is aggrieved that any decision, action or omission of the procuring entity is in contravention to the provisions of these rules or guidelines issued under them, he may make an application to such officer of the procuring entity, as may be designated by it for the purpose, within a period of 10 (ten) days or such other period as may be specified in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, from the date of such decision or action, omission, as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved.

Provided that after the declaration of a bidder as successful the application for review may be filed only by a bidder who has participated in procurement proceedings;

Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an application for review related to the matter of financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

Note: No application against any decision of the procuring entity relating to the following matters shall be made:

(1) determination of need of procurement

(2) provisions limiting participation of bidders in the bid process

(3) the decision of whether or not to enter into negotiations

(4) cancellation of a procurement process

(5) applicability of the provisions of confidentiality

Grounds for making an application

17.2 A bidder or a prospective bidder may file an application on any of the ground(s) including the following.

(1) The bidder is not satisfied with the decision of the procuring entity or that authority fails to give a decision in due time.

(2) Deficiency / deviation in the procurement process.

(3) Non-payment or delay in return of bid security to unsuccessful bidders.

(4) Any procurement in contravention of provisions of these Rules.

(5) Procuring entity or any of its officials receiving directly or indirectly improper inducement.

(6) Procuring entity or any of its officials engaging in corrupt or fraudulent practice or involving in such act.

(7) Intervening in the participation by competing bidders or proponents to be involved in any way in the proceedings relating to the bid or proposal.

(8) Any threat directly or indirectly to cause harm to the bidder, person or property of any person to be involved in the procurement proceedings or coercive act.

(9) Collusion or involving in groupism prior to, or after submission of bid or proposal with the objective of allocating procurement contract among the bidders or proponents or fixing the price of bid or proposal artificially or non-competitively or otherwise forbidding the procuring entity of the benefit of open and free competition.

(10) An irregularity in the confidentiality clause wherein a bidder has been found contacting the procuring entity from the time of the opening of bid or proposal until the notice of acceptance of bid or proposal is given with the objective of causing

interference upon bid or proposal or committing an act of interference in the examination or evaluation of bid or in the evaluation of proposal.

An application under aforesaid para 17.1 along with requisite fee may be presented personally or sent by registered/speed post to the office of the concerned authority. The application shall state the name and address of the applicant and set out concisely and under distinct heads the ground(s) on which the applicant feels aggrieved.

Disposal of the Application

17.3 Upon receipt of an application for review under the above paragraph, the procuring entity shall:

(1) after examining the application and the documents available to him, give such reliefs as may be considered appropriate to the applicant and shall communicate its decision to him.

(2) The procuring entity shall deal with an application as expeditiously as possible and shall endeavour to dispose of it within a period of 15(fifteen) days from the date of receipt of the application or such other period as may be specified in the pre-qualification document, bidder registration document or tender document, as the case may be.

If the procuring entity fails to dispose of the application made within the period specified, or if the bidder or prospective bidder is aggrieved by the decision of the procuring entity, the bidder or prospective bidder, may file an application for redressal to the competent authority of the department/Government.

Vexatious Applications or Complaints

17.4 Whoever intentionally submits any vexatious, frivolous or malicious application or complaint under these rules, with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder, shall be seriously dealt with.

CHAPTER - 18

CODE OF INTEGRITY FOR PROCURING ENTITIES AND BIDDERS

Introduction

18.1 A high ethical standard of conduct in procurement policies and practices is essential. The officials, not only must act ethically but also should be above the suspicion of unethical behavior.

Code of integrity for procuring entities and bidders

18.2 No official of a procuring entity or a person participating in a procurement process shall act in contravention of the code of integrity. The code of integrity includes:

(1) prohibiting -

(a) any offer, solicitation or acceptance of any bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;

(b) any omission, including a misrepresentation that mislead or attempt to mislead so as to obtain a financial or other benefit or avoid an obligation;

(c) any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process;

(d) improper use of information shared between the procuring entity and the bidders with an intent to gain unfair advantage in the procurement process or for personal gain;

(e) any financial or business transactions between the bidder and any official of the procuring entity;

(f) any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process;

(g) any obstruction of any investigation or audit of a procurement process.

(2) The procuring entity or bidders shall disclose conflicts of interest, if there are any.

(3) The bidder shall disclose any previous transgressions with any entity in India or any other country during the last three years or of any debarment by any other procuring entity.

The detailed Code of Integrity

18.3 The detailed Code of Integrity for personnel involved in procurement and for bidders is given below:

(1) All procurement personnel shall maintain an unimpeachable standard of integrity in all business relationships, both inside and outside their offices. Ethical conduct shall apply in all dealings with bidders or prospective bidders. Procurement personnel shall never use their authority or office for personal gain and will seek to uphold and enhance the standing of their department/ organisation.

(2) All individuals are responsible for the regularity of actions taken by them in the course of their official duties, and any staff member that takes action contrary to these rules and other relevant rules/regulations may be held personally responsible and financially liable for the consequences of such action.

(3) The standard of conduct for all personnel of the procuring entity involved in procurement actions includes, but is not limited to:

(a) Personnel shall not allow any bidders to have access to information on a particular acquisition, before such information is available to the public at large,

(b) Personnel shall not intentionally use unnecessarily restrictive or "tailored" specifications, terms of reference or statements of work that can discourage competition,

(c) Personnel shall not solicit or accept, directly or indirectly any promise of future employment from anyone who has sought or is seeking to obtain business from the procuring entity,

(d) Personnel shall not have a financial interest in any bidder(s) responding to a procuring entity's bidding exercise and are prohibited from any involvement in the procurement action,

(e) Personnel shall not disclose proprietary and source selection information, directly or indirectly, to any person other than a person authorised to receive such information.

(f) Procuring entity's personnel shall seek to treat all bidders in a fair and equitable manner in line with the principle of fairness, integrity and transparency in the procurement process.

(g) During the solicitation phase, all bidders must receive identical information. Any clarifications to

the solicitation documents must be provided at approximately the same time, in writing, to all bidders;

(h) Specifications should be linked to function and to performance as much as possible. They must not limit competition nor be unnecessarily restrictive;

(i) During the evaluation, the evaluation criteria specified in the bidding documents must be applied in the same manner for each evaluated offer. Under no circumstances shall new evaluation criteria, not mentioned in the bidding documents, be introduced during the evaluation process.

(j) In cases where the personal interest of the procurement official is in conflict with the interest of the organization, such cases shall be immediately reported by the concerned official to appropriate authority.

(k) The procurement officials shall not entertain any favour, recreation, presents, services, etc. by the potential bidders.

(l) The interest of the Procuring Entity shall be protected under all circumstances while dealing with information and information sources by the procurement officials.

(m) It shall be ensured by procurement officials that all suppliers and service providers get the same correct information.

(n) Any information about competitors shall not be solicited by suppliers and service providers.

(o) All bids shall be handled confidentially by procurement officials.

(p) It shall be ensured that selection of suppliers is done according to predetermined objective basis and is not influenced by personal reasons attributable to concerned officials in any manner.

Conflict of interest

18.4 A conflict of interest is considered to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

(1) The situations in which a procuring entity's personnel may be considered to be in conflict of interest include, but not limited to the following:-

(a) A conflict of interest occurs when procuring entity's personnel's private interests, such as outside professional or other relationships or personal financial assets, interfere or appear to interfere with the proper performance of his professional functions or obligations as a procurement official.

(b) Within the procurement environment, a conflict of interest may arise in connection with such private interests as personal investments and assets, political or other outside activities and affiliations while in the service of the procuring entity, employment after retirement from the procuring

entity's service or the receipt of a gift that may place the procuring entity's personnel in a position of obligation.

(c) A conflict of interest also includes the use of procuring entity's assets, including human, financial and material assets, or the use of procuring entity's office or knowledge gained from official functions for private gain or to prejudice the position of someone procuring entity's personnel does not favour.

(d) A conflict of interest may also arise in situations where procuring entity's personnel is seen to benefit, directly or indirectly, or allow a third party, including family, friends or someone they favour, to benefit from procuring entity's personnel's actions or decisions.

If any procuring entity's personnel believes that he may have a conflict of interest, he shall promptly and fully disclose the conflict to the procuring entity and shall refrain from participating in any way in the matter to which the potential conflict relates, until the conflict has been resolved satisfactorily.

(2) A bidder may be considered to be in conflict of interest with one or more parties in a bidding process if, including but not limited to:

(a) they have controlling partners in common; or

(b) they receive or have received any direct or indirect subsidy from any of them; or

(c) they have the same legal representative for purposes of the bid; or

(d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another; or

(e) A bidder participates in more than one bid in the same bidding process. However, this does not limit the inclusion of the same sub-contractor, not otherwise participating as a bidder, in more than one bid; or

(f) A bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the subject matter of procurement of the bidding process. All bidders shall provide in Qualification Criteria and Bid Forms, a statement that the bidder is neither associated nor has been associated directly or indirectly, with the consultant or any other entity that has prepared the design, specifications and other documents for the project or being proposed as Project Manager for the contract.

Ethical behaviour of the bidders

18.5 The extreme case of unethical behaviour is when bidders engage in corrupt practices. The list of definitions set forth below indicates the most common types of corrupt practices among bidders:

(1) 'Corrupt Practice' means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the action of another party;

(2) 'Coercive Practice' means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or property of the party to influence improperly the actions of a party;

(3) 'Fraudulent Practice' means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(4) 'Collusive Practice' means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party result in bids at artificial prices that are not competitive.

Debarment from bidding

18.6 (1) A bidder shall be debarred by the State Government if he has been convicted of an offence -

(a) under the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988) (PC Act); or

(b) under the Indian Penal Code, 1860 (Central Act No. 45 of 1860) (IPC) or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(2) A bidder debarred under sub-para (1) shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding 3 (three) years commencing from the date on which he was debarred.

(3) If a procuring entity finds that a bidder has breached the code of integrity prescribed, it may debar the bidder for a period not exceeding 3 (three) years;

(4) Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a procuring entity in respect of any procurement process or procurement contract, the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding 3 (three) years.

(5) The Government or a procuring entity, as the case may be, shall not debar a bidder unless such bidder has been given a reasonable opportunity of being heard.

Environmental considerations and Social responsibility

18.7 Bidders have the obligation with the procuring entity to comply with the rules, regulation and other laws concerning child labour, sexual exploitation and the fundamental rights of workers, health and safety, working conditions, freedom of association, environment, non-discrimination, human rights, and anti-corruption measures. By signing any contract with the procuring entity, the bidder confirms that he adheres to the provisions made in them. The procuring entity also is committed to doing business only with those bidders sharing its values of respect for fundamental human rights, social justice, human dignity, and respect for the equal rights of men and women.

Action to be taken in case of breach of code of integrity

18.8 In case of any breach of the code of integrity by a bidder or prospective bidder, as the case may be, the procuring entity may take appropriate measures including-

(1) exclusion of the bidder from the procurement process;

(2) calling off of pre-contract negotiations and forfeiture or encashment of bid security;

(3) forfeiture or encashment of any other security or bond relating to the procurement;

(4) recovery of payments made by the procuring entity along with interest thereon;

(5) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;

(6) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding 3 (three) years.

Integrity Pact

18.9 To use, practice and observe all the best, clean, ethical, honest and legal means and behaviour maintaining complete transparency and fairness in all activities concerning Registration, Bidding, Contracting/Rate Contracting and performance thereto, for which an 'Integrity Pact' as per Annexure to this chapter, is prescribed.

ANNEXURE

Integrity Pact (IP)

(Ref. para 18.9)

(To be given on letter head of the Supplier/Original Equipment Manufacturer (OEM), as the case may be, duly signed by the authority having legal power of attorney to bind the firm/company)

This Integrity pact (hereinafter called the IP) is a fidelity agreement between the Supplier (which include all their employees, agents, consultants and also their OEM, if any) who are registered/seeks registration or awarded/seeks Contract(s)/Rate Contract(s) (RCs) on one hand and State Purchase organisation (SPO) or any other procuring entity (PE) (hereinafter called the SPO/PE which include all its employees/officials/officers working as Public Authority) on the other.

2. Under this IP, it has been agreed, accepted and undertaken to use, practice and observe all the best, clean, ethical, honest and legal means and behaviour maintaining complete transparency and fairness in all activities concerning Registration, Bidding, Contracting/Rate Contracting and performance thereto. Neither the Supplier nor the Public Authority which include indenters, Purchase and inspection officials of SPO/PE shall have conflict of interest of any kind whatsoever nor demand or pay or accept any illicit gratification/bribe or hospitality or consideration/favour of any kind whatsoever and shall not use any corrupt practices including fraud, misrepresentation, misleading or forged/false documents, concealing/suppressing facts, undue pressures or influences from anyone (written or verbal/telephonic), bribery, rigging, cartelisation, collusion, which are not limited to, but also include the following:

(a) Collusive bidding: Collusive bidding can take form of an agreement among tenderers to divide the market, set prices, or limit production. It can involve 'wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties'. In legal terms all acts affected by collusion are considered void.

(b) Bid rotation: In bid-rotation scheme conspiring tenderers continue to bid, but they agree to take turns being the winning (i.e. lowest qualifying) bidder. The way in which bid-rotation agreements are implemented can vary.

(c) Cover Bidding: Cover (also called complementary, courtesy, token or symbolic) bidding occurs when individuals or firms/companies agree to submit bids that involve at least one of the following: (1) a competitor agrees to submit a bid that is higher than the bid of the designated winner, (2) a competitor submits a bid that is known to be too high to be accepted, or (3) a competitor submits a bid that contains special terms that are known to be unacceptable to the purchaser.

(d) Bid suppression: Bid-suppression schemes involve agreements among competitors in which one or more firms/companies agree to refrain from bidding or to withdraw a previously submitted bid so that the designated winner's bid will be accepted.

(e) Market allocation: Competitors carve up the market and agree not to compete for certain, customers or in certain geographic areas. Competing firms/companies may, for example, allocate specific customers or types of customers to different firms/companies, so that competitors will not bid (or will submit only a cover bid) on contracts offered by a certain class of potential customers which are allocated to a specific firm/company etc.

3. The party hereby agrees that he will not indulge in any such activity and will inform SPO/PE if any such activity is on. The party further agrees that he will not give bribe, speed money and gifts to any public official of SPO/PE and will not commit any offence in contravention of relevant IPC/PC Act or any Indian law in force.

4. The party hereby agrees that while canvassing order, they will not provide any inducement of the indenter, whether directly or indirectly including cash and non cash both pre, during and post procurement action and inform the SPO/PE if any such event is unfolding for which SPO/PE on assessment of the issue will refer the matter to the concerned administrative authority.

5. In case of failure or default in terms of this IP the Public Authority will be subjected to actions prescribed under the Government Servant Conduct Rules/Discipline and Appeal Rules etc. including penal actions and prosecution, while the Supplier will bear any or a combination of following penalties:

(a) Cancellation of Contract/Rate Contracts (RCs)
(b) Cancellation of Registration
(c) Forfeiture of all securities and performance Bank Guarantees
(d) Refusal to grant Registration and contracts/RCs for further period of 3 (three) years
(e) Suspension and/or banning the business dealings for period upto 3 (three) years
(f) Any other administrative or penal actions as deemed fit.
(g) Action under IPC/PC Act and other relevant laws of the country.

6. It has been further agreed that the actions as aforesaid except that at 5(g) above will not require any criminal conviction from any court of law or arbitration but will be based on 'No-contest' basis, upon

satisfaction of the SPO/PE, who will be the competent authority to finally decide the matter on strength of such materials/evidence of default/breach of the terms under this IP.

7. It has been also agreed prescribing that within 30 (thirty) days of such orders passed by SPO/PE, the aggrieved party shall have the right to appeal to the Principal Secretary/Secretary, Micro, Small and Medium Enterprises, Government of Uttar Pradesh, Lucknow and till the time a decision is taken on such appeal, the decision of SPO/PE would be in-force unless otherwise specifically ordered by the Principal Secretary/Secretary.

8. Agreed, accepted and signed on behalf of Supplier on this day and year mentioned below and handed over to the concerned office of SPO/PE forming integral part of all the affairs and transactions with and in relation to SPO/PE.

Signature on behalf of Supplier Firm/Company.....

Name and designation/capacity of signatory.....

Full address of the Supplier Firm/Company.....

Seal and Stamp of the supplier Firm/Company.....

Place: ……..

Date: ……

To

.....

.....

CHAPTER - 19

LOSSES AND SETTLEMENT OF DISPUTES

Loss or damage to goods in transit

19.1 Loss or damage to goods in transit entails loss of financial resources as well as human effort, and in case of imported goods of precious foreign exchange.

19.2 Definite and clear instructions should be given in the purchase/supply order with regard to the mode of dispatch and consignee's address, which are very necessary for correct and intact delivery of goods.

Responsibilities of the Consignor/Supplier/Manufacturer

19.3 It is the responsibility of the manufacturer/supplier/consignor to ensure that goods are adequately packed before these are dispatched and delivered to the carriers for transportation. The need for proper packing of goods for safety in transit and for delivery in sound condition to the consignee should be stressed in every purchase order.

19.4 Packages must be so marked that identification is made easily. Packages will be stamped with identification marks, both outside the package as well as on the contents inside to prevent substitution of inferior products by undesirable elements during transit.

19.5 Packages containing articles liable to be damaged by rough handling like glass or delicate instruments be marked 'Fragile', 'Handle with Care'. Weight of each package should be marked on the package as a check against pilferage etc.

19.6 A complete list of contents in each package called packing list/slip should be prepared, one copy thereof packed in the package itself and another forwarded to the consignee in advance.

Railway Consignments

19.7 The consignee is responsible for verifying at the time of taking delivery from Railway Authorities that the goods have been received intact without loss or damage. When goods are dispatched in full wagonloads, consignee should verify that the seals on the wagons are intact. If there is evidence of loss or damage, he should arrange to secure necessary certificates from the appropriate Railway officials before taking delivery. The loss or damage should in every case, be promptly reported to the supplier and purchase officer who placed the order. In any event the consignee should not before checking and verifying the goods give a receipt/certificate to the contractor.

19.8 Losses frequently occur in transit to goods dispatched by railway by supplier in compliance with order placed by the Purchase Officer. The responsibility for bearing the loss or damage occurring in transit in case of contract stipulating delivery FOR Station or destination, as per the normal terms agreed to by procuring entity, is of the supplier. The supplier is liable in such cases for any loss or damage that may occur in transit and to make good the same by replacement free of charge at destination or accept deduction from his bill for the quantity lost or damaged in transit.

Ship Consignments

19.9 The terms and conditions of the carrier bill of lading usually places responsibility on shippers to forward merchandise in good order and securely packed to ensure safe arrival during a normal journey with necessary additional protection if the goods are particularly susceptible to damage during normal loading and unloading operations.

In case of any loss or damage, the shipping agent should take prompt action to order survey and to meet the claim of importer/consignee in full or in part as the case may be.

Cancellation of contracts before completion and claims for compensations

19.10 Cancellation of contract placed by SPO/HOD/procuring entity becomes necessary sometimes on account of receipt of reduction/cancellation of demand from the indenters on the ground that demand for the goods in question no longer exists or has since been reduced. In dealing with such requests, SPO/HOD/procuring entity must observe the following procedure.

(1) The terms of a contract are binding on both the parties and a contract during its currency can be cancelled or modified only by mutual consent. The procuring entity should not, therefore, proceed to cancel a contract in whole or in part straightway on receipt of the indenter's request. On receipt of cancellation/reduction of demands from indenter each case should be examined immediately with reference to the terms and conditions of contract by the procuring entity and, where necessary legal opinion should be obtained. If the legal opinion confirms that the procuring entity is within its rights with reference to the terms and conditions of the contract to cancel it, for example where the delivery period has expired, action should be taken to give effect to cancellation/reduction straightway.

(2) Where, however, it is clear that the terms and conditions of the contract do not permit cancellation/reduction without supplier's consent; the supplier/contractor should be approached and persuaded to agree to cancellation/reduction without any financial repercussions. If the supplier/contractor agrees, the formal amendment or cancellation will be issued by the

SPO/HOD/procuring entity making it clear that the reduction/cancellation is with mutual consent.

(3) Where the supplier/contractor does not agree to cancellation / reduction without financial repercussions, the supplier/contractor should be asked not to make further supply and not to incur further expenditure pending decision as to whether the contract should be terminated pursuant to the Termination of Contract Clause and what the quantum of compensation payable, if any, should be. The indenter/consignee should also be advised of the position. Simultaneously, arrangements should be made for independent inspection of the stores in an unfinished state of supply with a view to ascertaining the current position of the supply of stores contracted for and the reasonableness or otherwise of the compensation claimed by the supplier/contractor. After the SPO/HOD/procuring entity are satisfied that the amount of compensation claimed by the supplier/contractor is reasonable, the indenting officer will be addressed explaining the issues involved and the amount of compensation that will have to be paid to the supplier/contractor and asked whether he wants the contract to be cancelled and is prepared to bear the compensation. If the Indenting Officer still desires cancellation and is prepared to bear the compensation, the cancellation/reduction will be affected by the purchase organisation with the approval of Government.

Responsibility for losses

19.11 The Commissioner and Director of Industries (SPO)/HOD/procuring entity act in respect of the purchase and inspection of stores as the agent of the indenting departments utilising its service, and the latter should be called upon to bear losses in cases in which:

(1) they are not lawfully and equitably borne by the suppliers, or carriers; or

(2) they are not due to any unauthorised or negligent act on the part of Commissioner and Director of Industries (SPO) / HOD / procuring entity.

Settlements of Disputes

19.12 Normally, there should not be any scope of dispute between the purchaser and the supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to disagreement between the purchaser and the supplier. Therefore, the conditions governing the contract shall contain suitable provision for settlement of such disputes/differences binding on both the parties.

Mode of Settlement

19.13 If there is grievance of any kind, whatsoever, which arises between the procuring entity and the supplier in connection with or arising out of the contract, the matter in the first place be referred to the Grievance Redressal Committee(s) constituted by Government.

Arbitrations

19.14 Mode of settlement of disputes/differences shall be through Arbitration.

If the parties fail to resolve the dispute by mutual consultation within 21(twenty one) days, then, depending on the position of the case, either the purchaser or the supplier shall give notice to the other party of its intention to commence arbitration as hereinafter provided:

(1) When the contract is with domestic supplier, the applicable arbitration procedure will be as per the Indian Arbitration and Conciliation Act, 1996.

(2) When the contract is with foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or Arbitration in accordance with the provision of UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules (subject to such modification as the parties may agree).

Venue of Arbitration

19.15 The venue of arbitration shall generally be the place from where the contract has been issued except when foreign supplier opts for Arbitration, in accordance with the provision of UNCITRAL Arbitration Rules, the venue can be a neutral country.

Panel of Arbitrators

19.16 For quick settlement of disputes, Government shall constitute a panel of arbitrators and an updated list may be published on the website of State Purchase Department.

Applicable Law

19.17 The contracts shall be interpreted in accordance with the laws of the Union of India.

Legal Advice

19.18 While processing a case for arbitration, the purchase department is to take legal advice, at appropriate stages from competent authorities like the Law Department of Government.

CHAPTER - 20

DOCUMENTARY RECORD OF PROCUREMENT PROCESS AND CLOSING OF CASES

Requirement of maintenance of record related to procurement

20.1 For reasons of transparency and accountability, the procuring entity shall maintain a record of all the procurement proceedings containing, at least, the following information:

(1) a description of the subject matter of the procurement, including the assessment of need for procurement;

(2) the names and addresses of bidders who presented submissions, the name and address of the bidder from whom the procurement is made and the agreed price, and in case of running contract and rate contract procedure, the names and addresses of the bidders with which the contract is concluded;

(3) a summary of any requests for clarification of the pre-qualification or bidding documents, the responses thereto, as well as, a summary of any modification of those documents;

(4) information related to the qualifications, or lack thereof, of bidders that made submissions including reasons for not qualifying or disqualifying any bidder;

(5) the contract price and terms and conditions of the procurement contract and where a written procurement contract has been concluded, a copy thereof;

(6) in the case of a rate contract procedure, the terms and conditions of the rate contract or a copy of the rate contract that was concluded;

(7) in the case of an empanelment procedure, the terms and conditions of the empanelment or a copy of the agreement, if any, that was concluded;

(8) a summary of the evaluation and comparison of bids, including the application of any margin of preference and reasons for rejection or non-consideration of a bid, if any;

(9) if the procurement is cancelled, a statement to that effect and the grounds therefor;

(10) in procurement proceedings involving the use of a procurement method other than open competitive tendering, the grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used;

(11) in the case of proceedings relating to appeals penalty, copies of appeals made and all decisions in reference to them;

(12) details of any grievance redressal proceedings and the related decisions;

(13) any other information or record as may be prescribed.

20.2 The procuring entity shall not be liable to bidders for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with this rule.

20.3 Any document, notification, decision or other information generated in the course of a procurement, including the grievance redressal proceedings or in the course of a meeting, or forming part of the record of the procurement process, shall be in a form that provides a record of the content of the information and is accessible so as to be usable for subsequent reference.

Closing of Cases

20.4 Files on which all actions are completed and no further action is required has to be closed. While closing the file all outstandings are required to be cleared. Following factors should be taken into account before closing the case.

(1) The goods are supplied in full quantity as per specifications and terms within delivery period.

(2) Inspection Note is issued.

(3) Shortage as losses, breakages and defects noticed in supply are made good.

(4) Warranty period is over.

(5) Claims made by the suppliers under price variation clause in the contract are settled.

(6) NOC called from the consignees, are received.

(7) Actual recovery is made in the case of risk purchase from the defaulting firm/company.

(8) No claim regarding liquidated damages is pending.

(9) There is no proposal for waiver of penalty pending.

(10)The tender samples, if any, have been returned to the tenderer.

(11)The security deposits have been refunded / adjusted.

Note: **If there are audit objections and legal disputes, such cases should not be closed under any circumstances. The files pertaining to such contracts should be sent to an officer authorised by Head of office/Head of department for safe custody.**

Retention of Records

20.5 Files to be preserved permanently

(1) Policy file regarding purchase of goods.

(2) Files regarding blacklisting of defaulting firms/companies.

(3) Policy judgments of courts of law, which are useful for future references.

20.6 Files to be preserved for 30 (thirty) years

(1) Registration of firm/company as an approved Supplier.

(2) Register/files of suspension, banning, blacklisting and performance of firms/companies.

20.7 Files to be preserved for 5 (five) years

(1) Indents for purchase of stores placed by different departments.

(2) Inspection of stores purchased (by the Acceptance of Tender) by the Purchase Wing.

(3) Agenda Papers and Minutes of the meetings of Departmental Purchase Committees.

20.8 Files to be destroyed after 2 (two) years after the work is over

Misc. Correspondence regarding Purchase.

Note - Subject to the provisions of the Right to Information Act, 2005 or of any other law for the time being in force relating to retention of records, the procuring entity shall retain the documentary record indicated as above for a reasonable period. Cases under investigation/enquiry, the documentary record shall be suitably retained.

Cases pending with Courts

20.9 In cases of matter pending before a Court of law, the record shall be maintained till final outcome of the case.

If no action is necessary then the decision may be taken for destruction of file as per norms.

Maintenance of files pertaining to procurement

20.10 Some of the broad steps to be followed for the filing structure for maintenance of record of procurement are given below:

(1) A general file/guard file shall be used to record / store the following documents:-

(a) Uttar Pradesh Procurement Manual;

(b) Standard Bidding Documents;

(c) Guidelines issued for procurement;

(d) Training Manuals, Departmental Manuals;

(e) Any subsequent Notifications or Government Orders issued regarding procurement.

(f) Policy judgments of court of law

(2) HOD/Procuring entity shall take necessary steps for keeping procurement documents also in the form of soft copies.

CHAPTER - 21

INVENTORY MANAGEMENT

Introduction

21.1 The stores routine is often neglected and it is not realised that stores represent an equivalent amount of cash. The storage of goods requires not only adequate facilities in the form of space and equipment, but also an understanding of the nature of the materials and their requirements. The stores must be properly laid out and capable of easy identification and location. Stores must be stacked, racked or binned properly. Protective measures such as greasing, wrapping and inhibiting corrosion must be carried out as soon as the goods are received.

21.2 The departmental officers/officials entrusted with the care, use or consumption of stores, are responsible for maintaining correct records and preparing correct returns in respect of the stores.

Note : The term 'Stores' applies generally to all articles and materials purchased or otherwise acquired for the use of Government, including not only expendable and issuable articles in use or accumulated for specific purposes, but also articles of dead stock of the nature of plant, machinery, instruments, equipment, furniture, fixtures, etc.

Receipt of Stores

21.3 (1) While receiving goods from a supplier the officer in charge of stores should refer to the relevant contract terms and follow the prescribe procedure for receiving the materials/goods.

(2) All materials received should be examined, counted, measured or weighed, as the case may be, when delivery is taken, and should be kept in charge of a responsible Government servant who should be required to give a certificate that he actually received the materials and record them in the stock register prescribed for the purpose.

(3) A department which is required to maintain regular accounts of stores under the rules shall not keep in hand any stores outside such accounts. If in any circumstances stores are received from another department or concern, not under the regular purchase or transfer system, e.g. as a gift or on the closing down of a concern, their value and quantity should be immediately adjusted in the accounts. The value of stores so received should be credited to the revenue of the State. No stores shall be accepted by the receiving department unless they are likely to be of use to that department.

Issue of Stores

21.4 When materials are issued from stock for departmental use, manufacture or sale, etc. the Government servant in-charge of the stores should see that a requisition or indent in proper form has been made by a properly authorised person, examine it carefully with reference to any orders or rules for the issue of stores and sign it after making suitable alterations under his dated initials, in the description and quantity of materials, if he is unable to comply with the requisition in full. Incase alternative materials are available in lieu of the indented materials a suitable indications to this effect may be made in the requisition/indent. The requisition or indent should be returned at once to the requisitioning officer for signature. When materials are issued, a written acknowledgment should be obtained from the person to whom they are ordered to be delivered or dispatched or from a duly authorised agent.

Custody and Accounts of Stores

21.5 The head of an office or any other officer entrusted with stores of any kind should take special care for arranging for their custody, for keeping them in good and efficient condition and for protecting them from loss, damage or deterioration. Suitable accommodation should be

provided more particularly for valuable and combustible goods. He should maintain suitable accounts and inventories and prepare correct returns in respect of the stores in his custody with a view to preventing losses through theft, accident, fraud or otherwise and making it possible at any time to check the actual balances with the book balances.

21.6 The form of stock accounts mentioned in the preceding para should be determined with reference to the nature of the stores, the frequency of the transactions and the official requirements of each department or office in which they are used. The general and essential principles in accordance with which such accounts arc to be kept are laid down in the following paras.

21.7 The detailed store accounting rules prescribed in the departmental manuals of various departments or under any special orders which apply to any particular department, shall remain in force. The departments may, however, review their existing rules and orders in the light of the rules of this chapter. Where audit of the accounts of stores and stock is undertaken by the Accountant General, he will bring to notice cases in which there is a gap to be filled in by the application of these rules and in which losses to Government could have been avoided by the application of these rules.

Keeping in view the nature of the stores separate accounts should be kept of:

(1) 'Dead Stock' such as plant, machinery, equipment, furniture, fixture; and

(2) Other Stores - Live Stock, consumable and perishable stores.

Dead Stock

21.8 A stock book of the dead stock should be maintained in all Government offices in a form prescribed by competent authority,

showing the number received, the number disposed of (by transfer, sale, loss, etc.) and the balance in hand for each kind of article. The instructions given below should be carefully observed by all concerned.

(1) The inventory should be priced whenever the items have to enter into the block account maintained for a Government commercial undertaking or the value of the items is necessary in order to enable Government to calculate the charge to be levied upon private persons or bodies. As regards other items, a numerical inventory would suffice except for articles costing in excess of the amount determined by Government.

Note: For the purpose of numerical inventory, articles of a similar description such as tables, carpets etc. should be put into separate categories, each category comprising articles of the same measurement and make and manufactured with the same metal or wood or other material.

(2) The stock books should ordinarily be maintained at the site of the dead stock. If it is desirable in any particular case, to depart from this general principle or to maintain additional consolidated stock books elsewhere it should be decided on the merits of each case.

(3) When articles of dead stock e.g. tools and plant are lent to local bodies, contractors and others, the hire and other charges as determined under rules prescribed by competent authority should be recovered regularly.

(4) Government libraries and museums should maintain up-to-date catalogues as well as prescribed stock accounts and inventories.

Other Stores

21.9 A reliable list, stock books or account of all stores in the custody of Government officers should be maintained, in a form prescribed by

competent authority, to enable a ready verification of stores and check of accounts at any time; and transactions must be recorded in it as they occur.

21.10 Price lists, recording both quantities and values should be maintained in cases where the stores are intended to be converted into money, or where it is desired to distribute their cost over the works, items or objects on which they are actually used. In such cases, the expenditure on stores must be charged to an appropriate classification code.

21.11 Purely numerical inventories, i.e., recording quantities only, will suffice for articles not costing above prescribed amount when the articles are intended solely for the service of the department keeping them and it is not desired to distribute their cost. In such cases the expenditure on stores must be charged off final1y to the service concerned.

Note: In some cases it may be found necessary to show prices and measurements, etc. vide note below para 21.8(1) against some articles, say, when for facility of' identification or other reason, it is desirable to distinguish costly articles from cheap articles bearing the same general description otherwise.

21.12 The lists, stock books or accounts of stores should in all cases be subject to such internal check as may be prescribed by competent authority, whether or not they are subject to any check by the Accountant General.

Physical Verification of Stores

21.13 Articles of dead stock should be verified at least once a year in the month of April and the result of verification recorded on the stock books. All discrepancies noticed must be properly investigated and brought to account immediately so that the stock books may present

the true account. A separate statement of surplus, obsolete and unserviceable stores should also be prepared at the time of annual verification, clearly indicating the action taken and the progress made in this regard since the last verification. Disposal of surplus / unserviceable stock should be ensured in the first quarter of the financial year.

21.14 A physical verification of all stores other than dead stocks, should be made at least once in every 6 (six) months, subject to the condition that the verification is not entrusted to a person-

(1) who is the custodian. the ledger keeper, or the accountant of the stores to be verified, or who is a nominee of, or is employed under the custodian, the ledger keeper or the accountant; or

(2) who is not conversant with the classification, nomenclature and technique of the particular classes of stores to be verified.

21.15 The verification should never be left to a subordinate official and it should be as far as possible, entrusted to a responsible officer who is independent of the superior executive officer in charge of the stores.

21.16 A certificate of verification of stores with its results should be recorded on the list, stock books or account, as the case may be, when such a verification is carried out.

21.17 The following instructions should invariably be observed in making physical verification of stores:

(1) Verification must always be made in the presence of the officer responsible for the custody of the stores or of a responsible person deputed by him;

(2) All discrepancies noticed should be brought to account immediately, so that the stores account may represent the true state of the stores; and

(3) Shortages and damages, as well as, surplus / unserviceable stores, should be reported immediately to the competent authority.

21.18 Balances of stores should not be held in excess of the requirements of a reasonable period or in excess of any prescribed maximum limit. A report of surplus, obsolete and unserviceable stores should be promptly submitted to the competent authority.

21.19 Where a priced inventory is maintained, it is essential that the values recorded therein shall not be materially in excess of the market value of the stores. The head of the department concerned must issue instructions to govern -

(1) the fixation of prices with reasonable accuracy;

(2) the periodical review and revision of rates; and

(3) the agency to be employed in periodical revaluation

Note**:** The 'market value' of an article for this purpose, means the cost per unit at which the article, or an article of a similar description, can be procured at a given time at the Store Godown from some suitable public markets.

Profits and Losses in Store Accounts

21.20 All profits and losses due to revaluation, stock-taking or other causes should be duly recorded and adjusted where necessary. Formal sanction of competent authority should be obtained in respect of losses, even though no formal correction or adjustment in the account is involved.

(1) Losses due to depreciation should be analysed, and recorded under following heads, according as they are due to-

(a) normal fluctuation of market prices;

(b) fair wear and tear;

(c) lack of foresight in regulating purchases; ,

(d) neglect after purchase.

(2) Losses not due to depreciation should be grouped under the following heads-

(a) losses due to theft or fraud;

(b) losses due to neglect;

(c) losses due to an act of God and other calamities such as fire, enemy action, etc.;

(d) anticipated losses on account of obsolescence of stores or purchases in excess of requirements;

(e) other losses due to damage, etc.

21.21 **Stock books are a record of Government assets. These should be brought up-to-date by the officer concerned when there is a change in assets value. The inspecting officers/audit officers will see to it that the aforesaid books are properly maintained and kept up-to-date. They should also examine the statements of surplus/obsolete and unserviceable stores and report to HOD or Government, as the case may be, the action taken by the officers concerned for the disposal of these stores.**

Note : For a brief note on 'Planned Flow of Stores', see Annexure-A to this chapter.

Disposal of Stores

21.22 The following instructions should be observed by all concerned for disposal of surplus or unserviceable stores.

(1) Whenever it appears that the articles borne on stock or tools and plant including motor vehicles are either in excess of the requirement or have become unserviceable and unfit for further use, the matter should immediately be reported to the competent authority who should arrange for inspection of the articles.

(2) A report of the surplus, obsolete and unserviceable stores for disposal should be prepared in Form-A available at Annexure-B to this chapter. This report should be signed by the reporting authority after satisfying that all surplus, obsolete and unserviceable stores have been correctly included in it.

(3) If the articles proposed to be disposed of, are serviceable or likely to become so after reasonable repairs and are being disposed of due to being surplus, a list of such articles should first be circulated to other offices of the parent department and also to offices of other departments likely to require the surplus articles to ascertain if they can be utilised by any of them. The condition, book value and the depreciated value of each article in the case of commercial departments should also be indicated in the list. The articles should be disposed of only if they are not required by other offices.

(1) An item may be declared surplus or obsolete or unserviceable if the same is of no use to the department. The reasons for declaring the item surplus or obsolete or unserviceable should be recorded by the competent authority.

(2) The competent authority may, at his discretion, constitute a committee at appropriate level to declare item(s) as surplus or obsolete or unserviceable.

(3) The book value, guiding price and reserved price, which will be required while disposing of the surplus goods, should also be worked out. In case where it is not possible to work out the book value, the original purchase price of the goods in question may be utilised.

(4) In case an item becomes unserviceable due to negligence, fraud or mischief on the part of Government servants, responsibility for the same should be fixed.

Modes of Disposal

21.23 (1) Surplus or obsolete or unserviceable stores of assessed residual value above Rs. 10 (ten) lac should be disposed of by :

(a) obtaining bids through advertised tender, or

(b) public auction.

(2) For surplus or obsolete or unserviceable stores with residual value upto Rs. 10 (ten) lac, the mode of disposal will be determined by the competent authority, keeping in view the necessity to avoid accumulation of such stores and consequential blockage of space and, also, deterioration in value of stores to be disposed of.

(3) Certain surplus or obsolete or unserviceable stores such as expired medicines, food grain, ammunition etc., which are hazardous or unfit for human consumption, should be disposed of or destroyed immediately by adopting suitable mode so as to avoid any health hazard and / or environmental pollution and also the possibility of misuse of such goods.

(4) Surplus or obsolete or unserviceable stores, equipment and documents, which involve security concerns (e.g. currency, negotiable instruments, receipt books, stamps etc.) should be disposed of / destroyed in an appropriate manner ensuring compliance of relevant rules as also financial prudence.

(5) Prompt action regarding safe disposal of e-waste should be taken as per Government orders issued from time to time.

Disposal through Advertised Tender

21.24 (1) The broad steps to be adopted for this purpose are as follows:

(a) Preparation of bidding documents.

(b) Invitation of tender for the surplus goods to be sold.

(c) Opening of bids.

(d) Analysis and evaluation of bids received.

(e) Selection of highest responsive bidder.

(f) Collection of sale value from the selected bidder.

(g) Issue of sale release order to the selected bidder.

(h) Release of the sold surplus goods to the selected bidder.

(i) Return of bid security to the unsuccessful bidders.

(2) The important aspects to be kept in view while disposing the goods through advertised tender are as under :

(a) The basic principle for sale of such goods through advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold. All the required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. Applicability of taxes, as relevant, should be clearly stated in the document.

(b) The bidding document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding.

(c) The bidders should be asked to furnish bid security along with their bids. The amount of bid security should ordinarily be ten percent of the assessed or reserved price of the goods, the exact bid security amount (not as a percentage of assets or reserved price) should be indicated in the bidding document.

(d) The bid of the highest acceptable responsive bidder (H_1) should normally be accepted. However, if the price offered by that bidder is not acceptable, negotiation may be held only with that bidder. In case such negotiation does not provide the desired result, the reasonable or acceptable price may be counter-offered to the next highest responsive

bidder(s).

(e) In case the total quantity to be disposed of cannot be taken up by the highest acceptable bidder, the remaining quantity may be offered to the next higher bidder(s) at the price offered by the highest acceptable bidder.

(f) Full payment, i.e. the residual amount after adjusting the bid security should be obtained from the successful bidder before releasing the goods.

(g) In case the selected bidder does not show interest in lifting the goods, the bid security should be forfeited and other actions initiated including re-sale of the goods in question at the risk and cost of the defaulter, after obtaining legal advice.

(3) Late bids i.e. bids received after the specified date and time of receipt should not be considered.

Disposal through Public Auction

21.25 (1) A department may undertake auction of stores to be disposed of either directly or through approved auctioneers.

(2) The basic principles to be followed here are similar to those applicable for disposal through advertised tender so as to ensure transparency, competition, fairness and elimination of discretion. The auction plan including details of the goods to be auctioned and their location, applicable terms and conditions of sale, the assets or reserved price determined by competent authority as also the date, time and place of auction etc. should be given wide publicity in the same manner as is done in case of advertised tender.

(3) While starting the auction process, the condition and location of the stores to be auctioned, applicable terms and conditions of

sale etc., (as already indicated earlier while giving wide publicity for the same), should be announced again for the benefit of the assembled bidders.

(4) The composition of the auction team will be decided by the competent authority. The team should, however, include an officer of the Finance Wing of the department.

(5) The auction should be conducted in the presence of gazetted officer(s) who should ensure that a proper record is maintained of all the bids.

(6) The officers conducting the auction will not be bound to accept the highest or any bid. Reasons should, however, be recorded if it is not proposed to decide the auction in favour of the highest bidder. Persons of doubtful means and intentions may not be allowed by the officer conducting the auction to bid at the auction.

(7) The acceptance by the officer conducting the auction of any bid will be subject to confirmation by the competent authority and in certain cases also by Government, which will be announced at the time of auction.

(8) Every person bidding will be held to his bid whether it be the highest or not, and it will be distinctly understood that any remission of the amount of the bid will under no circumstances be considered.

(9) No person shall be allowed to bid at the auction on behalf of another person unless he holds a written authority from such other person who is present at the auction and authorises or ratifies the bid made on his behalf.

(10) The goods shall be sold as and where they lie. The whole of the lot or lots shall be taken from the site of accumulation.

Quantities, sizes, numbers, weights and measurements, etc., as announced at the auction may be approximate and no warranty or guarantee shall be implied, and no complaint will be entertained. The stores will be sold on the assumption that the bidders have inspected the lot or lots and know what they are buying.

(11) When it is proposed to auction any particular item or items of stores by weight or number and not on lot basis, an announcement to that effect shall be made before the store is put to auction. The bids in such cases shall be for each number or unit or weight. The price to be charged shall be calculated on the actual weight or numbers delivered.

(12) In the event of the officer conducting the auction being of opinion that bidders are forming a ring and fair price are not being realised for the vehicle/stores offered in the auction, he may stop the auction.

(13) The officer conducting the auction will reserve the right of withdrawing from the auction any stores advertised or kept in the premises without assigning any reason.

(14) On the third fall of hammer (i.e. closing of the bid for the vehicle/stores) 25 (twenty-five) percent of the amount of the bid will have to be deposited in cash as earnest money. No cheque, Bank drafts or Hundi, will be accepted. The officer conducting the auction may, however, without assigning any reasons, demand as earnest money a higher percentage up to the full amount of the bid.

(15) In the default of the payment of the earnest money, the bid shall forthwith be cancelled and the stores/vehicle offered to the next highest bidder or re-auctioned. The Government will reserve the

right to take such action against the bidder who failed to deposit the earnest money as may be authorised by law.

(16) The attention of the intending bidder will be invited to Section 185 of IPC, according to which whoever shall bid for any vehicle/stores with no intention to perform the obligation under which he lays himself by such bid, shall be liable for prosecution.

(17) After the competent authority or Government, as the case may be, has approved the bid, the balance will have to be deposited within 7 (seven) days of the receipt of the registered notice.

(18) If a successful bidder fails to pay the balance of the amount within the time specified above, the auction in his favour will be cancelled and the earnest money deposited by him on the third fall of the hammer forfeited to Government and the vehicle/stores will be offered to the next highest bidder provided his bid plus 25 (twenty five) percent realised from the highest bidder as earnest money does not fall short of the bid offered by the highest bidder. If this condition is not satisfied the article should be re-auctioned as and when the competent authority thinks best without any notice to the bidder. Government reserves the right to take such action against the bidder who fails to pay the balance as may be authorised by law.

(19) Pending approval of the competent authority, the successful bidder may make suitable arrangement to keep a watch on the vehicle/stores etc., shown in his favour, which will have to be kept in the premises where the auction has been held at the risk and responsibility of the successful bidder.

(20) The delivery of the material auctioned will be made after full and final payment has been made by the bidder in whose favour the

bid is auctioned and the permission for removal given by the competent authority.

(21) The material will be removed in the presence of competent authority or any other gazetted officer authorised by him.

(22) The vehicle/stores fully and finally paid for must be completely removed by buyer within 7 (seven) days from the date of final payment. Where this is not done, the competent authority may recover in addition to any loss that may be suffered a charge on account of storage space at one per cent per day on the sale price of the said vehicle / stores or lot or lots or portion thereof till the date of removal or re-sale.

(23) If the competent authority or Government as the case may be, does not approve of the accepted bid, the amount deposited by the successful bidder will be returned to him and the auction in his favour considered as null and void.

(24) The successful bidders will have to pay the terminal tax on the vehicle/stores for which their offer/offers have been approved and accepted, to the Municipal authorities before taking delivery of vehicle/stores, if required, and any other tax that may be found due under law.

(25) In the case of auction of motor vehicles, the registration certificate if valid, will be given to the successful bidder. If the same could not be renewed by the department for some reasons, the bidder will have to get it renewed at his own cost and no claim on this account will be entertained in the case of auction of vehicles.

(26) In case of any dispute touching or arising out in respect of the terms and conditions hereinbefore contained or any action taken or proposed to be taken in pursuance thereof, the same shall be referred to the arbitration of a person nominated by Government/

Head of the department concerned whose decision thereon shall be final and binding on the parties.

(27) In case of any litigation, the jurisdiction for filing a suit will be the place where the auction is held.

(28) A sale account should be prepared in the Form-B available at Annexure-C to this chapter. The sale account should be signed by the officer(s) who supervised the auction after comparing the entries made in the sale account with the report of surplus stores. If the articles are released in the presence of an officer other than the officer(s) who supervised the auction, the entries in column 9 of the sale account should be attested by the dated signature of such officer.

(29) A copy of each order declaring stores as unserviceable, obsolete, or surplus should be endorsed by the competent authority to the Accountant General, Uttar Pradesh.

(30) Acceptance of the terms and conditions contained in these rules should be obtained in writing from all the bidders, before they are allowed to bid at the auction.

Disposal at scrap value or by other modes

21.26 If a department is unable to sell any surplus/obsolete/ unserviceable item in spite of its attempts through advertised tender or public auction, it may dispose of the same at its scrap value with the approval of the competent authority in consultation with its Finance Wing. In case the department is unable to sell the item even at its scrap value, it may adopt any other mode of disposal including destruction of the item in an eco-friendly manner with the approval of the competent authority.

ANNEXURE-A

INVENTORY MANAGEMENT

(Planned Flow of Stores)

(Ref. note below para 21.21)

1. A planned flow of stores is essential to the efficient working of a department. Too much supply of stock results in high storage costs, excessive capital being locked up, shortage of valuable space, stock losses and obsolescence, while a short supply results in reduced output and possible panic buying.

2. Inventories are cushions (a) to absorb planning errors and unforeseen fluctuations in supply and demands, and (b) to facilitate smooth working. The inventory management has, therefore, become very important with the growing variety and complexity in functioning.

Analysis of Stock

3. Stocks are analysed by categories according to their values. All items in stock are listed in order of descending value, showing quantity held and the corresponding value of the stores. From these figures, an analysis is made in three categories, *viz*. high, medium and low values. This classification is usually referred to as the ABC* technique, where the A category consists of items of considerable value, the B category of medium value and C category of low value. Results of surveys have shown a situation more or less such as the following :

Category	% of total value	% of total quantity
A	70	10
B	25	35
C	05	55

(*) It is known as 'Always Better Control'

4. It can be seen that 10% of the items held in stock account for 70% of the total value. Obviously these items need to be controlled carefully and very strict levels of stock should be maintained. Those items of medium value represent 35% of the total quantity, but account for 25% of the value. These items should be subject to the usual material control routine, but levels of the stock set need not be quite so rigidly adhered to as those in the A category. Finally the low value items in category C represent the largest quantity in use, but account for only 5% of total value. For these items detailed records need not be maintained, but stocks being kept under some observations so as to ensure the re-ordering of fresh supplies when necessary.

VED Analysis

5. In this analysis the items are classified into three categories depending upon the consequences of-Store stockout when demanded,. The cost of shortage may vary depending upon the seriousness of such a situation. Accordingly the items are classified into V(Vital), E(Essential) and D(Desirable) categories. Vital items are the most critical having extremely high opportunity cost of shortage and must be available in stock when demanded. Essential items are quite critical with substantial cost associated with shortage and should be available in stock by and large. Desirable group of items do not have very serious consequences if not available when demanded but can be stocked items.

6. Obviously the % risk of shortage with the 'vital' group of items has to be quite small-thus calling for a high level of service. With 'Essential' category we can take a relatively higher risk of shortage and for 'Desirable' category even higher. Since even a C-class item may be vital or an A-class item may be 'Desirable', we should carry out a two-way classification of items grouping them in 9 distinct groups as A-V,

A-E, A-D, B-V, B-E, B-D, C-V, C-E and C-D. Then we are able to argue on the aimed at service-level for each of these nine categories and plan for inventories accordingly

FSN Analysis

7. Not all items are required with the same frequency. Some stores are quite regularly required, yet some others are required very occasionally and some stores may have become obsolete and might not have been demanded for years together. FSN analysis groups them into three categories as Fast-moving, Slow-moving and Non-moving (dead stock) respectively. Inventory policies and models for the three categories have to be different. Most inventory models are valid for the fast-moving items exhibiting a regular movement (consumption) pattern. Many spare parts come under the slow moving category which has to be managed on a different basis. For non-moving dead stock, we have to determine optimal stock disposal rules rather than inventory provisioning rules.

8. Categorisation of stores into these three types on value, criticality and usage enables adoption of the right type of inventory policy to suit a particular situation.

Stock Levels

9. The major objective of a store control system is to ensure that 'stock-outs' do not occur and that surplus stock is not carried.

Re-order Level

10. This is the point at which it is essential to initiate purchase requisitions for fresh supply of stores. This point will be higher than the minimum stock level, so as to cover such emergencies as abnormal usage of stores or unexpected delays in delivery of fresh supplies; it will also be lower than the maximum stock level, otherwise excess stock would be carried.

Minimum and Maximum Stock Levels

11. In Inventory Management a few important criteria have to be determined, which would regulate the maximum size of the Inventory.

(1) Firstly, the Safety Stock, Buffer Stock or Minimum Stock should be decided. This is the quantity which is kept in inventory as a safeguard against fluctuations in purchases, delivery dates, and requirements of a department. If there is suddenly an abnormal wastage or rejection, more stock is required; if the market is tight and uncertain procurement action may take longer time. Similarly, if the supplier fails to keep delivery schedule, there should be enough Safety Stock to tide over the lean period without interrupting the working of a department. The safety stock ensures uninterrupted functioning.

(2) The Lead Time (i.e., the time lag between placing of the order and the actual materialisation of supply) and the monthly consumption determine the ordering level.

12. The Maximum level of stock is determined by the safety stock and the order quantity. The average size of the Inventory is Safety Stock plus half of the Order Quantity. The Maximum Level of Stock is Safety Stock plus Order Quantity. The actual stock varies between the Safety Stock (lower limit) and the Safety Stock plus Order Quantity (upper limit).

13. The Order Quantity is to be determined in each case by balancing the two opposing factors, *viz.,* carrying cost of inventory and the cost of re-ordering and set up time. A larger inventory means more carrying cost. Smaller the order quantity larger is the number of orders, and therefore the cost of ordering, and set up cost is more. The **Economic Order Quantity (EOQ)** is obtained at the point when these two sets of

opposing trends balance each other. Mathematically it is possible to obtain the Economic Order Quantity by a formula which is:

$$E^* = \sqrt{2AP/S}$$

where E is the Economic Order Quantity (EOQ); A=annual quantity used in units; P=cost of placing an order; and S= cost of carrying one unit in stock for one year.

14. It can be shown that average operating cost (C*) per year at the optimum is given by the expression: $\sqrt{2APS}$

Explanation- (1) The formula assumes that there is a steady or average requirement for the stores and that the price per unit is constant regardless of order size.

Explanation- (2) Carrying cost of inventory includes:

(a) Deterioration, obsolescence pilferage and wastage:

(b) Interest on capital locked up in stores;

(c) Incidence of insurance costs; and

(d) Cost of operating stores (incl. salary and space for storage).

Illustration: A particular organisation uses a component at the rate of 24,000 units per year. Cost of a component per unit is Rs. 25 and carrying cost of inventory per year is 10.5% of the cost of the component. Cost of placing an order is Rs. 2000. Calculate annual operating cost for different order sizes.

Solutions:

(1) Carrying cost/holding cost per unit = 25x0.105 = Rs. 2.625

(2) Operating costs of various standard order sizes

Order size (Units)	Annual order cost (Rs.)	Average stock (Units)	Cost of holding (Rs.)	Annual operating cost (Rs.)
2000	24000	1000	2625	26625
4000	12000	2000	5250	17250
6000	8000	3000	7875	15875
8000	6000	4000	10500	16500
12000	4000	6000	15750	19750

From the figure shown in the Table, 6000 units are the Economic Order Quantity.

From the formula, we have E= $\sqrt{2AP/S}$ = $\sqrt{2x24000x2000/2.625}$

= 6047 units or 6000 units

(in round figures)

and, operating cost (C) = $\sqrt{2AP\ S}$= $\sqrt{2x24000x2000x2.625}$

= Rs. 15875

Aforesaid figures are in line with those shown in the Table.

Considerable amount of money is spent by way of operating cost of inventories, but it is not explicitly reflected in the accounts. When re-order points, economic order quantities, safety stocks and other technicalities could be calculated, the entire system may be gradually computerized depending upon the nature of inventory.

(*) Calculations

No of order raised per year = A/E

Average stock level = E/2

Average operating cost per year (C) =AP/E + SE/2 ----------(1)

on differentiation, $dC/dE = -AP/E^2+S/2$

For C to be minimum, $dC/dE = 0 = -AP/E^2+S/2$

whence, E= $\sqrt{2AP/S}$

(It could be easily verified that d^2C/dE^2 is positive for the aforesaid value of E)

On putting the value of E in (1) above, we have, C=$\sqrt{2AP\ S}$

ANNEXURE-B

FORM-A

[Ref. para 21.22 (2)]

Report of surplus, Obsolete and Unserviceable Stores for Disposal

Name of the department / office ……..……..

Item No.	Particulars of stores	Quantity/Weight	Book Value/Original purchase price	Condition and year of purchase	Mode of disposal (sale, public auction or otherwise)	Remarks
1	2	3	4	5	6	7

Signature ……..…..

Designation ……..…..

Date ……..…..

ANNEXURE-C

FORM - B

{Ref. para no 21.25(28)}

Sale Account

Name of the department / office ……..……

Item No.	Particulars of stores	Quantity /Weight	Name and full address of purchaser	Highest bid accepted	Highest bid rejected	Earnest money realized on the spot	Date on which the complete amount is realized and credited into treasury	Whether the articles were actually handed over on the spot. If not, the actual date of handing over of the articles with quantities	Auctioneer's Commission and acknowledgement for its payment
1	2	3	4	5	6	7	8	9	10

Signature ……..……

Designation ……..……

Date ……..……

CHAPTER 22

IRREGULARITIES/LAPSES OBSERBVED IN PUBLIC PROCUREMENT

22.1 Some irregularities, lapses, shortcomings and malpractices observed in the procurement of goods are given below. **The list is only illustrative and not exhaustive.**

Improper Planning

1. Submission of forecast too late to be acted upon resulting in unrealistic budget provisions.

2. Estimates did not include specific description of items, resulting in purchase of items which were not useful. Loopholes in the description or/and in the specifications of items favouring the selected firms.

3. Financial commitments made without availability of funds.

4. Premature purchases of huge materials and large scale equipment made, resulting in block up of the capital and deterioration of the materials/equipment received.

5. Indents for purchases put up without verifying the availability from the stores or/and without indicating budget provisions. Indents did not include the probable date by which the articles were actually required for use.

6. Creating avoidable crisis situation by not taking timely action and advance planning of procurement of materials and making purchases at the last moment in the name of urgency/emergency/short supply etc. bypassing various procedures.

7. List of registered venders not updated regularly by procuring authority.

8. Equipment/machines could not be put to any use and became unserviceable for non availability of skilled manpower for operation and maintenance thereof.

Irregularities connected with purchases

9. Purchases made without administrative approval/sanction by competent authority.

10. Splitting and sub divisions of substantial purchases often made to keep competency of sanction at lower levels and to favour some suppliers.

11. Purchases not properly scheduled, resulting in delays in procurement, purchases at higher prices, quality deficient purchases, purchases from non reliable agencies.

12. Hasty purchases made at the fag end of the financial year, which could have been planned well in advance to avoid higher prices, inferior quality etc.

13. In case of advertised tenders, sale of tender documents closed 1-2 weeks advance of tender opening.

14. In case of proprietary purchases, the detailed justification not placed on record.

15. In case of recorded emergencies, though the short term tenders were invited expressing urgency of requirements, cases were processed in a very routine and casual manner.

16. Bulk or large purchases made at unusually high rates from co-operative societies, recognised institutions without inviting tenders/rates of articles which were not included in the list of articles permitted to be purchased from these agencies and/or which were not manufactured by these agencies.

17. Certificates regarding reasonability of rates were furnished on the requisitions without actual assessment of prevailing rates.

Tender/Bidding Documents

18. The evaluation/loading criteria not specified in the bidding documents in unambiguous terms.

19. The detailed generic technical specifications including performance parameters and technical evaluations criteria not specified in unequivocal terms.

Defects in Short listing of Agencies for Tendering

20. Instances observed where -

(1) Objective criteria for short-listing not fixed in advance.

(2) Names of agencies which were not manufacturers, included in the shortlists in which only the manufacturers were to be included.

(3) Considerations given to criteria which were vague and could not be defined;

(4) Criteria deliberately fixed to include or exclude certain agencies otherwise than in public interest.

21. For some sizeable purchases pre-qualification of agencies not done. After opening the tenders, the capabilities of agencies superficially examined. Several tenders were considered non responsive on the basis of such examination. For purchases of items of common use like pumps and accessories, pipes of all types, cables, rigs etc. pre-qualifications are essential, but criteria for pre-qualifications not fixed in advance of the short listings.

Defects and Loopholes in Tender Invitation

22. In many invitations, the notice appeared late in newspapers, leaving very little time for fair competition.

23. To induce competition, tender notices should be properly published and should furnish adequate information like quantity, period of delivery, place of delivery etc. along with the usual dates for issue, acceptance and opening of tenders. Such details, in several instances, were lacking.

24. In some instances of huge purchases, wide publicity through local and national newspapers was not done.

25. For some huge purchases, tender notices did not mention quantities, thus averting fair competition. Large orders subsequently placed at high rates on favoured firms.

26. Deliberately restricting issue of tender notices to only selected agencies.

Malpractices in Issue of Tenders

27. In several cases, tender papers were not kept ready before issue of the tender notices. When interested agencies did not get tender papers inspite of several inquiries, they were discouraged from purchasing tenders. Only preferred agencies having inside information and submitting high offers in specified time, were subsequently favoured.

Opening of Tenders

28. Procedure to be adopted at the time of opening of tenders is as follows:

(a) To be opened at the advertised time and place in presence of tenderers or their representatives, who may like to attend.

(b) All the corrections and over-writings in the tender to be attested and numbered in red ink on each page with dated initials of the officer opening the tender and to get them attested invariably by the tenderers, before acceptance of the tender.

(c) On each page of the schedule, the number of corrections and over-writings to be clearly mentioned at the end of each page and to be properly attested with the dates. Any omission observed to be brought out clearly on each page.

(d) Each tender should be numbered serially, initialed and dated on the first page.

(e) Any ambiguity in rates quoted by the tenderer in words and/or figures to be clearly indicated on each page of the schedule.

(f) Where the contractors have omitted to quote the rates in figures or in words, the omission to be recorded by the officers opening the tender, on each page.

(g) After opening of the tenders, the officer should read out the rates as well as any correction, contained in the forwarding letter or separately attached to the tender and should get the signature of the contractor/representatives present, on these.

In many cases, the procedures laid down above were not followed scrupulously. This left scopes for malpractices. In some instances, the officer opening the tender did not attest the corrections scrupulously. Omissions in writings of rates in words were not brought out. Subsequently the rate was increased by correction without altering the total and the payments were made at the increased rate.

Tender Evaluation

29. In case of an item-rate tender, all items were not brought out in the comparative statement, only the total amount was indicated.

30. Instances were observed in which the lowest tenders were let off on flimsy grounds allowing other firms of the same group to get tenders at high prices.

31. Technical evaluations did not reflect in comparative statement. It was not brought out in the comparative statement that the articles offered were not as per the tender specifications.

32. Considerable time was taken in finalising tenders after they were opened. The time taken exceeded the validity period. Irregularities occurred by such intentional delays in two ways:

(a) Favourable offers were allowed to lapse;

(b) Goods were purchased at high rates from favoured agencies.

33. The terms and conditions of the tenders were not properly evaluated and placed in agenda for consideration by the committee. The committee gave sanctions without proper verification.

34. Minutes of the Committee's meetings in which the sanctions were given for the purchases, did not include the basis on which the purchases were sanctioned.

35. Interpolation of special conditions by favoured tenderers after opening and before finalisation of tenders.

Negotiations

36. Negotiations are normally not allowed. In certain exceptional cases, where price quoted by all suppliers are unreasonably high and re-tendering is not considered advantageous or there is no time for that in view of genuine emergencies, negotiations could be held. Also in cases where attempts to get reasonable competitive rates have failed, rates can be negotiated.

In several cases, no serious efforts were made to obtain reasonably low prices during negotiation. No efforts were made to break the ring formation of bidders. Negotiations were held and rates were only nominally reduced to indicate that efforts were made to lower the rates which were high and then the high negotiated rates were accepted.

Irregularities in Tender Acceptance

37. Single high tenders accepted without justification and without sanctions from competent authorities.

38. Cases of re-invitation of tenders on rejection of favourable offers on technicalities and acceptance of tenders when circumstances did require re-invitation.

Wrong Purchase Orders

39. Time barred repeat orders given at the rates previously sanctioned, to favour an agency. The quantum of the repeat orders far exceeded the quantity for which the rates were invited in the first instance.

40. An office approved rates for purchases on the basis of short notice in view of some specific urgency for a limited quantum. These rates were operated by other offices with no control on quantities, to favour chosen parties.

41. Single branded item purchased without approval of Government.

Wrong Implementation of Purchase Orders

42. Delivery schedules not respected. For delays in supplies, liquidated damages not recovered. Purchases approved by purchase committees, beyond their competence. The approvals were based on inadequate information supplied in agenda notes. Total amounts involved in purchases not furnished in the agenda yet purchases were approved.

43. Periods of supply were specified, not from the dates of the order, but subsequently. Delays in technical/commercial clearance to suit late supply.

44. Despite provision in the contracts for releasing advance payment against Bank Guarantee, the advance payment released without taking Bank Guarantee.

45. Though the prospects of supply were bleak, timely action for revalidation/encashment of Bank Guarantee for advance payment was not taken, and the Bank Guarantee was allowed to lapse, jeopardising Government interest.

46. Delivery period is the essence of any contract. Specific delivery period with reference to the terms of delivery was not incorporated with the necessary provision for liquidated damages/penalty clause in the event of delay in supply/installation.

47. Detailed guarantee/warranty clause embodying all the safeguards not incorporated in tender enquiry and the resultant contract.

Irregularities connected with a contract

48. Placing of a contract without obtaining competitive tenders in an open and public manner except in cases where the necessity for obtaining such tenders has been waived by any general or special rule or order by the competent authority.

49. Acceptance without adequate reason, of a tender other than the lowest.

50. Inadequate scrutiny of tendered rates before acceptance.

51. Unsuitability of the form of contract.

52. Deviation from the contractual terms in favour of the supplier or varying the terms without the approval of the competent authority.

53. Omissions to enforce the conditions of a contract, such as those requiring the deposit of security or levy of penalty.

CHAPTER - 23

MISCELLANEOUS

Preparation for Procurement

23.1 Preparation makes for higher efficiency and efficacy. It enables the procurement officials concerned to anticipate the onset of events and, as a consequence, better calibrate their response to them. Having a better appreciation of forthcoming events gives these officials the opportunity to test a range of possible courses of action, choose the best and most feasible of these, and identify measures to put them in action. Ultimately it would enable them to determine the best manner by which such measures are to be implemented, ensuring that their individual and collective impacts are optimised at the least cost.

Filing System

23.2 The procurement files are very important and sensitive documents and thus there is a need to have a single file system with proper page numbering. In case of urgency, if opening of part files is unavoidable, the same should thereafter be merged with the main file. The decisions and deliberations of the individuals or the tender committees should also be properly recorded and well documented.

Consideration of Indian Agents

23.3 Following important aspects, to examine the genuineness of the prices quoted by the Indian Agent, the nature of services which could be available from Indian Agent and compliance of Tax Laws by the Indian Agent and to prevent leakage of foreign exchange should be taken care of:

(1) Foreign Principal's proforma invoice indicating the commission payable to the Indian Agent, nature of after sales service to be rendered by the Indian agent.

(2) Copy of the agency agreement with the foreign principal and the precise relationship between them and their mutual interest in the business.

(3) The enlistment of Indian Agent with DGS&D under the compulsory registration scheme of Ministry of Finance, Government of India.

Buy Back Offer

23.4 When it is decided with the approval of the competent authority to replace some existing old goods with their newer and better versions/substitutes, the department may trade the existing old goods while purchasing the new ones. For this purpose, suitable clauses are to be incorporated in the tender enquiry document so that the interested tenderers formulate and submit their tenders accordingly. Provision should also be kept in the tender documents to permit the interested tenderers to inspect the old goods to be traded through this transaction.

23.5 Appropriate provision should also be kept in the tender document allowing the purchase organisation to reserve its right to trade or not to trade the old goods while purchasing the new ones and the tenderers are to be asked to frame their quotations accordingly covering both the options.

23.6 Depending on the value and condition of the old goods to be traded, the time frame for as well as the mode of handing them over to the successful tenderer should be decided and relevant details in this regard suitably incorporated in the tender document.

Operation and Maintenance of Equipment/Machinery

23.7 In buying equipment, the Procuring entity has to consider the operation and maintenance requirements of the goods to be procured. These refer to the availability and cost of spare parts in the local market, the skills required in operating and maintaining the equipment,

and similar considerations. For example, if spare parts and maintenance service are not available locally, or, if available, are very expensive, the procuring entity may consider buying, instead the substitute or equivalent product. It should be noted, however, that spare parts must be available locally. On the other hand, if the items being procured are high technology items, or are highly specialised and cannot be satisfactorily substituted by other products, the Procuring Entity may consider including the supply of spare parts, consumables and/or maintenance services for a specified period of time, as part of the contract package.

23.8 Obsolescence could also be a factor in deciding whether to lease or to buy equipment. It may be more economical for the Procuring Entity to consider the leases of equipment that are easily rendered obsolete.

23.9 With a view to ensuring optimum utilisation of equipment, necessary skilled manpower should be sanctioned expeditiously with the sanction of equipment as a matter of routine, so that necessary skilled manpower could be available when the equipment is delivered at the site. Logbooks of the equipment should be maintained right from the date of delivery so as to ensure that there is no delay in the installation of the equipment and there optimum utilisation thereafter.

Maintenance Contract

23.10 Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble free service. For this purpose, the purchase organisation may enter into maintenance contract. It must however be kept in mind that maintenance contract is to start after the expiry of the warranty period, during which the goods are to be maintained free of cost by the supplier.

23.11 Maintenance contract may be entered into either with the manufacturer/supplier of the goods or with a competent and eligible firm/company, not necessarily the manufacturer/supplier of the goods in question. The purchase organisation should decide this aspect on case to case basis on merit.

23.12 If the maintenance contract is to be entered into with the supplier of the goods, suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods is also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers. An equipment with a lower quoted price may carry a higher maintenance liability. Therefore, total cost on purchase and maintenance of the equipment over its projected lifecycle should be assessed to consider its suitability for purchase.

23.13 However, if the maintenance contract is to be entered into with a competent and eligible supplier separately, a separate tender notice is to be floated for this purpose and tenders evaluated and ranked accordingly for placement of maintenance contract. Here, the supplier of the goods may also quote and its quotation, if received, is to be considered along with other quotations received.

23.14 While evaluating the tenders for maintenance of goods covering a longer period (say, more than one year), the quoted prices pertaining to maintenance in future years are to be discounted to the net present value (NPV) as appropriate for comparing the tenders on equitable basis and deciding the lowest evaluated responsive tender.

23.15 The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions including payment terms are to be incorporated in the tender document. The terms of payment for the maintenance service will

depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance are made on half-yearly or quarterly basis.

23.16 A suitable provision should be incorporated in the tender document and in the resultant maintenance contract indicating that the prices charged by the maintenance contractor should not exceed the prevailing rates charged by it from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in its bill.

23.17 If the goods to be maintained are sophisticated and costly, the tender document should also have a provision for obtaining performance security. The amount of performance security will depend on the nature of the goods, period of maintenance etc. It generally varies from 2.5 % to 5% of the value of the equipment to be maintained.

23.18 Sometimes, the maintenance contractor may have to take the goods or some components of the goods to its factory for repair etc. On such occasions, before handing over the goods or components, suitable bank guarantee is to be obtained from the firm/company to safeguard purchaser's interest.

23.19 Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the purchase organisation to withdraw the maintenance contract due to some unforeseen reasons. To take care of the same, there should be a suitable provision in the tender document and in the resultant contract. A model clause to this effect is provided below:

'The purchaser reserves its right to terminate the maintenance contract at any time without assigning any reason. The contractor will not be entitled to claim any compensation against such termination.

However, while terminating the contract, if any payment is due to the contractor for maintenance services already performed in terms of the contract, the same would be paid to it as per the contract terms'.

Depending on the cost and nature of the goods to be maintained, suitable notice period for such cancellation to come into effect is to be provided in the documents.

Turnkey Contract

23.20 A turnkey contract is a mix of goods contract and works contract. Generally, in the tender documents for a turnkey contract, the purchase organisation specifies the performance and output required from the plant proposed to be set up and broadly outlines various parameters it visualises for the desired plant. The inputs and other facilities, which the purchase organisation will provide to the contractor are also indicated in the tender document. The contractor is to design the plant and quote accordingly. The responsibility of the contractor will include supplying the required goods, machinery, equipment etc. needed for the plant; assembling, installing and erecting the same at site as needed; commissioning the plant to meet the required output etc., as specified in the tender documents.

23.21 While entering into a turn-key contract, department is to follow the relevant instructions prescribed in the Procurement Manual for goods as well as in the Works Manual.

Disposal of Surplus Goods

23.22 With the passage of time, many of the goods purchased by the departments become unserviceable or obsolete or sometimes surplus. Departments should dispose of such goods at the earliest, to avoid unnecessary inventory carrying cost, decrease in resale price of those goods etc.

23.23 Detailed comprehensive instructions for disposal of such goods are available in chapter-21 of this manual.

Upstream Activities

23.24 Procuring entities mainly concentrate on the downstream activities i.e. tender conditions, tender documents, eligibility criteria, bid evaluation, contract awarding etc. It would be worthwhile to point out here that equal attention is also required to be paid to upstream activities like determination of technology, conceptual design, specification, vendor base identification etc.

Computerisation of Purchase Work

23.25 Every department should attempt to computerise all the areas of purchase management to the maximum extent possible and develop a suitable package for these purposes through a competent IT firm/company. This will ultimately result in better efficiency, more speed in performing the duties and, also, reduction in the overall expenditure.

Capacity Building

23.26 Purchase management is a specialised subject and, therefore, the officials entrusted with purchase work should be adequately trained at the entry level itself to avoid mistakes in tender evaluation, placement of contract, contract management etc., because any mistake in public procurement may cause financial repercussions, operational hold-ups, and unwarranted legal complications for the departments. The training should not be confined to mere knowledge of extant rules and procedures applied mechanically but also to basic principles and concepts of public procurement, writing of specifications, qualification and evaluation criteria and contract terms.

23.27 In addition to entry level training, the purchase officials should also be sent for in-service training periodically to keep them abreast of

the changing scenario and latest techniques of Purchase Management taking place within as well as outside the country. Cooperation of professional training institutes in capacity building of procurement officials may be sought in this regard.

Economy in Procurement

23.28 It is needless to add that any drive in economy in public procurement can be successful only if the large majority of public servants, and in particular, the senior officers of Government departments participate in the drive and cooperate with Government to the fullest possible extent. Senior officers can do much by precept and example, by supervision and by control to make their subordinates truly economy minded.

Institutional Framework

23.29 In order to provide effective leadership in public procurement and bring about the reforms, Government may setup an Institutional framework preferably a dedicated unit/department of Public Procurement. This unit/department will not have operational responsibility for direct procurement, it would act as a repository of the law, rules and policy on public procurement and monitor compliance thereof. It would institute best practices, professionalise the public procurement function, arrange for capacity building, create and maintain the overarching public procurement portal and maintain management information systems and statistics pertaining to public procurement.

Amendment to Form(s)/Format(s)

23.30 The purchase organisation should scrutinise the issue on its merits to ensure that the amendment will not have any adverse effect on the purchase organisation.

Competent financial concurrence should be obtained before effecting any amendment having financial implications/repercussions. Further, there may be an occasion where consultation with the Law Department of Government will be necessary before effecting the purposed amendment.

Beyond the Manual

23.31 The important and significant areas of public procurement have been covered in this Manual. A situation may, however, crop up in a purchase case for which no solution may be readily available in this Manual. In such a situation, the departments may seek advice and guidance from the Government in Micro, Small and Medium Enterprises department clearly bringing out the difficulties along with a proposed generic solution listing out the ingredients of the special circumstances for examination and review by the Government. References of a general nature having elements of managerial decision making and concerning a particular procurement should be avoided.

CHAPTER – 24

TIMELINE FOR PROCUREMENT OF GOODS

Procurement Activities and Timeline for Procurement of Goods

24.1 In order to eliminate delays, there should be appropriate time frame for each stage of procurement activities, and each unit of the procuring entity, as well as all indenters / user units of departments should sincerely adhere to the prescribed time frame. Each department should ensure conclusion of procurement contract within the validity of the tenders. Extension of tender validity must be discouraged and resorted to only in absolutely unavoidable, exceptional circumstances with the approval of the competent authority. To achieve this, departments should delineate the responsibility of different officials and agencies involved in the procurement process and delegate, wherever necessary, appropriate purchase powers to the lower level functionaries with due approval of the competent authority.

24.2 As discussed in previous chapters of this Manual, the different stages of public procurement like, forecast of requirement, preparation and submission of indents, procurement planning and its implementation should be carried out in an efficient manner so that Government gets the best value for money spent.

24.3 Different stages of procurement activities and the timeline thereof are mentioned below. It could be seen that some of the activities may be taken up simultaneously.

Sl. No.	Procurement Activity	Timeline	Remarks
1.	Initiation of purchase proposal and preparation of NIB documents	On receipt of administrative sanction and the funds for the	

		purpose, of course keeping in view the requirement schedule and the lead time.	
2.	Publication of NIB in newspapers and its posting on State Portal / departmental website	The day NIB is issued.	NIB for goods of estimated value of above Rs. 10 (ten) crore may also be published in Indian Trade Journal (ITJ). In case of Global Tenders, Indian Embassies abroad as well as Foreign Embassies in India may also be requested to give wide publicity of the requirement in those countries as also to put the tender notice on their websites.
3.	Sale of tender documents	From the date of publication of NIB until one hour before the deadline of submission of bids	
4.	Pre-bid conference, where necessary	At least 12 (twelve) days before the deadline for submission of bids	Copies of minutes of pre bid conference should be made available to all

			participants not later than 3 (three) days from the day of conference
5.	Issue of supplemental/ bid bulletin, if necessary	At least 7 (seven) days before the deadline for submission of bids	Supplemental/ bid bulletin should be made available to all the bidders, who have secured tender documents. Any clarification, correction or modification shall be suitably publicised.
6.	Receiving of technical and financial bid envelopes	Up to the deadline of submission of bids. Where supplemental / bid bulletin are issued / made available to the bidders, from such day up to the deadline of submission of bids.	
7.	Opening of bid envelope (in case of single bid system)	Immediately after the deadline of submission of bids, as mentioned in NIB.	
8.	Opening of technical and financial bid envelopes, in case of two bid system (two-envelop	Technical bid envelope shall be opened and evaluated in the first stage as mentioned in NIB.	

	bidding)	Financial bids of only those bidders, who were found to be technically qualified, shall be opened in the second stage as mentioned in NIB.	
9.	Evaluation of Bids and determining the Lowest Calculated Bid (LCB).	Evaluation and ranking of financial bids to get the LCB shall be completed on the basis of pre determined criteria, within 7 (seven) days of opening of financial bid.	
10.	Post-qualification and determining the Lowest Calculated Responsive Bid (LCRB).	Within 7 (seven) days from the determination of the LCB, post-qualification process shall be completed to determine the LCRB.	In exceptional cases Head of the procuring entity may suitably extend the post qualification period
11.	Drafting the resolution and recommending the award	The earliest and latest possible dates for this activity are the same as the dates for post-qualification and determination of the LCRB.	

12.	Deposit of performance security and execution of contract agreement	Within 15 (fifteen) days from the date of issue of Acceptance Letter (AL) / Letter of Intent.	Ref para 14.28(4)

Note : (1) Above time schedule should be strictly adhered to. If there is slippage for valid reasons, such as time required for making negotiations, counter offers and obtaining responses and analysis thereof, these should be properly recorded and well documented.

Note : (2) Reasonable time should be allowed for submission of bids. Ordinarily, the minimum time to be allowed for submission of bids should be 3 weeks (twenty one days) from the date of publication of the tender notice or availability of the tender document for sale, whichever is later. Where the department also contemplates obtaining bids from abroad, the minimum period should be kept as 4 weeks (thirty days) for both domestic and foreign bidders. In limited tender enquiry a minimum period of 7 (seven) days, 3 (three) days in case of emergency, should be given to the firms/companies to offer their bids.

APPENDIX

FREEQUENTLY ASKED QUESTIONS (FAQ)

1. What are "Technical Specifications"?

Ans. The term "technical specifications" refers to the physical description of the goods or services, as well as the procuring entity's requirements in terms of the functional performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. The technical specifications must include the testing parameters for goods, when such testing is required in the contract.

'Functional description' is the description of the functions for which the Goods are to be utilised.

'Performance description' refers to the manner that the Goods are required to perform the functions expected of them.

'Environmental interface' refers to the environment in which the required functions are performed at the desired level.

'Design' refers to the technical design or drawing of the goods being procured. A design standard is particularly useful in cases where the goods procured are specially manufactured for the procuring entity.

2. What are the considerations in setting the technical specifications of the goods to be procured?

Ans. In determining the technical specifications of the goods, the objectives of the project or the procurement at hand must be considered and the standards that should be met by the goods in terms of function, performance, environmental interface and/or design identified. To the extent practicable, standards as specified by the Bureau of Indian Standards should be followed. For products where there are no specified Indian standards, the international standards may

be considered. A market survey must also be conducted, that will include a study of the available products or services, industry developments or standards, product or service standards specified by the authorised Government entity like the Bureau of Indian Standards, ISO or similar local or international bodies. Product brochures, technical publications, industry newsletters, the industry itself, as well as the Internet, are good sources of product information. A comparative study of the options available in the market and their relevance to the requirements of the projects should be conducted.

In-house experts must be tapped to provide technical advice. If there are no in-house experts available to provide advice on highly technical goods, the procuring entity may hire consultants to assist it in developing the technical specifications for the procurement at hand.

The use of brand names is prohibited. Specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. Hence, a generic description of the product or service must be used.

3. What are Bidding Documents?

Ans. Bidding documents are documents issued by the procuring entity to provide prospective bidders all the necessary information that they need to prepare their bids. These clearly and adequately define, among others:

1. The objectives, scope and expected outputs and/or results of the proposed contract;
2. The technical specifications of goods to be procured;
3. Expected contract duration, the estimated quantity, delivery schedule and/or time frame;

4. The obligations, duties and/or functions of the winning bidder; and
5. The minimum eligibility requirements of bidders, such as track record, production capacity, financial position etc.

4. What are the contents of Bidding Documents?

Ans. The Bidding Documents contain the following:

1. Notice inviting Bids (NIB);
2. Instructions to Bidders (ITB);
3. Bid Data Sheet (BDS);
4. General Conditions of Contract (GCC);
5. Special Conditions of Contract (SCC);
6. Schedule of Requirements;
7. Technical Specifications of the Goods to be procured; and
8. Sample Forms as annexed to the bidding documents.

The specifications and other terms in the bidding documents shall reflect minimum requirements. A bidder may, therefore, be allowed to submit a superior offer. However, in the evaluation of the bids, no premium or bonus must be given as a result of this superior offer. For further details refer para 13.5 and Annexure-B of chapter-13

5. In addition to properly crafted Bidding Documents, what other practices may a procuring entity observe to ensure a successful procurement?

Ans. All prospective bidders should be provided the same information, and should be assured of equal opportunities to obtain additional information on a timely basis.

Procuring entities should provide reasonable access to project sites for visits by prospective bidders.

For complex supply contracts, particularly for those requiring refurbishing existing equipment, a pre-bid conference may be arranged whereby potential bidders may meet with the procuring

entity's representatives to seek clarifications (in person or online). Minutes of the conference should be provided to all prospective bidders (in hard copy or sent electronically).

Any additional information, clarification, correction of errors, or modifications of bidding documents should be publicised and also sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate action. If necessary, the deadline should be extended.

6. What is a Bid Security?

Ans. A bid security is a guarantee that the successful bidder will not default on his offer, will enter into contract with the procuring entity and furnish the performance security as stipulated in tender documents.

A bid security must be submitted with every bid, unless exempted. It must be operative on the date of bid opening, and payable to the procuring entity.

7. What happens if a bidder does not submit a Bid Security?

Ans. His bid shall be rejected.

8. What is a Performance Security?

Ans. A performance security is a guarantee that the winning bidder will faithfully perform his obligations under the contract prepared in accordance with the bidding documents. It must be posted in favour of the procuring entity, and will be forfeited in the latter's favour in the event it is established that the winning bidder is in default in any of its obligations under the contract.

9. When shall the Performance Security be posted by the bidder with the Lowest Evaluated Responsive Bid?

Ans. Within 15 (fifteen) days from the date of notification of award/letter of intent of the procuring entity, the successful bidder

should furnish the procuring entity with the performance security in accordance with the Conditions of Contract, and in the form prescribed in the Bidding Documents. The performance security forms part of the contract.

10. When should the bidding documents be made available to prospective bidders?

Ans. The bidding documents must be made available to the prospective bidders from the time the Invitation to Bid is advertised until one hour before the deadline for submission of bids. The procuring entity must ensure that prospective bidders are given ample time to examine the bidding documents and to prepare their respective bids. The bidding documents are strictly confidential and shall not be divulged or released to any person prior to its official release.

11. What is a Pre-bid Conference?

Ans. The pre-bid conference is the initial forum where the procuring entity's representatives and the prospective bidders discuss the different aspects of the procurement at hand.

The ground rules that will govern the procurement are discussed during the conference. In particular, the participants discuss the legal, technical and financial components of the contract to be bid. This is also an opportunity for the prospective bidders to request for clarifications about the bidding documents. However, it should be noted that any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin.

It is important that responsible and knowledgeable officials attend the conference. The persons who actually formulated the scope

of work, plans and technical specifications for the project should be present among those representing the procuring entity. Prospective bidders, on the other hand, should be encouraged to send representatives who are legally and technically knowledgeable about the requirements of the procurement at hand. It is also important that the prospective bidders are given ample time to review the bidding documents prior to the pre-bid conference.

12. When do you hold a Pre-bid Conference?

Ans. In case of turn-key contract or contract of special nature for purchase of sophisticated and costly equipment, a suitable provision is to be kept in the tender enquiry document for a pre-bid conference for clarifying issues and clearing doubts, if any, about specification and other allied technical details of the plant, equipment and machinery projected in the tender enquiry document. The date, time and place of pre-bid conference should be indicated in the tender enquiry document for information of the interested tenderers.

A pre-bid conference must be conducted **at least 12 (twelve) days before the deadline for the submission and receipt of bids.** If the pre-bid conference is held less than 12 (twelve) days before the deadline for the submission and receipt of bids, the deadline should be moved to a later date. A supplemental/bid bulletin shall be issued for this reason. Note that these periods are generally all within the deadline for submission and receipt of bids.

13. What happens if there is a need for clarification or interpretation on the Bidding Documents after the Pre-bid Conference has been held?

Ans. Requests for clarification(s) on any part of the bidding documents or for an interpretation may be made by prospective

bidders provided that these are in writing and are submitted to the procuring entity at least 10 (ten) days before the deadline for the submission and receipt of bids. In this case, the procuring entity shall issue its response by issuing a supplemental/bid bulletin, to be made available to all those who have properly secured the bidding documents. .

The procuring entity may, at its own initiative, also issue supplemental/bid bulletins for purposes of clarifying or modifying any provision of the bidding documents not later than 7 (seven) days before the deadline for the submission and receipt of bids. Any modification to the bidding documents must be identified as an 'AMENDMENT.'

The supplemental/bid bulletin should also be posted on the website of the procuring entity concerned, if available and the State Portal within the same timetable. It will be the prospective bidders' responsibility to ask for, and secure, these bulletins. However, procuring entity should ensure that all prospective bidders receive the bid bulletins.

A supplemental/bid bulletin must contain a brief but comprehensive and accurate summary of the issue or issues that it wishes to address. If it was a prospective bidder that raised the issue addressed by the bulletin, then it ought to contain a summary of that bidder's request for clarification and/or interpretation, without identifying the bidder.

Any clarification, correction or modification should be suitably publicised.

Bidders, who have submitted bids before a supplemental/bid bulletin is issued, have to be informed in writing and allowed to modify or withdraw their respective bids.

14. What is a bid?

Ans. A bid refers to a signed offer or proposal to undertake a contract submitted by a bidder in response to, and in consonance with, the requirements stated in the bidding documents. "Bid" is also equivalent to and may be used interchangeably with 'Proposal', 'Quotation' and 'Tender'. Generally a bid has two components, the **Technical Proposal or the Technical Bid**, and the **Financial Proposal or the Financial Bid**. The Technical and Financial Bids must each be contained in separate sealed bid envelopes.

15. What happens if only one bidder submits his eligibility and bid envelopes?

Ans. Even if only one bidder submits his eligibility and bid envelopes, the bidding process continues. If the bidder is declared eligible and his bid is found to be responsive to the bidding requirements, his bid will be declared as a Single Responsive Bid and considered for evaluation and contract award under the relevant rules. (Ref. para 14.21 of chapter-14)

16. What happens if questions/doubts have been raised about the eligibility of a prospective bidder after he has been declared eligible?

Ans. Notwithstanding the eligibility of a prospective bidder, the procuring entity concerned reserves the right to review his qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the

situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that he fails the preset eligibility criteria, the procuring entity shall consider the said prospective bidder as ineligible and shall disqualify him from submitting a bid or from obtaining an award or contract.

17. What happens if only one bidder is declared eligible?

Ans. The procurement process proceeds with the Preliminary Examination of bids. Again, if the eligible bidder submits a bid that is found to be responsive to the bidding requirements, his bid shall be declared as a Single Responsive Bid and considered for evaluation and contract award under the relevant rules. (Ref. para 14.21 of chapter - 14)

18. What is disqualification?

Ans. Disqualification is a distinct concept from ineligibility and post-disqualification. When a bidder is disqualified, it is barred from further participating in the procurement at hand, even if, in some instances, it has initially been declared eligible. Even if a bidder is Post-qualified, if after such Post-qualification, the procuring entity has found grounds for disqualification, the latter may declare such bidder disqualified, and shall not award the contract to the bidder.

19. Can a bidder withdraw his bid?

Ans. Yes, a bidder may, through a Letter of Withdrawal, withdraw his bid, before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. It should be noted, however, that the act of habitually withdrawing from bidding or submitting letter of non-participation for at least 3 (three) times within a year is a ground for the imposition of administrative penalties, except when done for a valid reason.

The bidder that withdraws his bid beyond the deadline for the

submission of bids, but within the period of validity of his tender, will forfeit his bid security, as well as the imposition of any applicable administrative sanction under the rules.

20. What is the purpose of Bid Evaluation?

Ans. The purpose of bid evaluation is to determine the Lowest Calculated Bid (LCB). This is done by:

1. establishing the correct calculated prices of the bids, through a detailed evaluation of the financial component of the bids; and
2. ranking of the total bid prices as so calculated from the lowest to the highest. The bid with the lowest price shall be identified as the LCB.

21. What happens if a bidder does not accept the arithmetical corrections done by the procuring entity (PE)?

Ans. The procuring entity must disqualify the bid and forfeit the bid security of the bidder.

22. What is Post-qualification?

Ans. Post-qualification is the process of verifying, validating and ascertaining all the statements made and documents submitted by the successful bidder, which includes ascertaining the said bidder's compliance with the legal, financial and technical requirements of the bid.

If its eligibility documents have been validated and verified, and its compliance with the legal, financial, and technical requirements of the bid has been ascertained, the bidder must be declared the bidder with the **'Lowest Calculated Responsive Bid' (LCRB).**

Note : The eligibility check does not ascertain the validity and genuineness of the eligibility documents submitted by the bidders. Neither does it determine the veracity of the claims made by the

bidders in their financial and technical proposals. The post-qualification process, on the other hand, does.

23. What does Post-qualification entail?

Ans. The procuring entity, through the process of Post-qualification has to verify, validate and ascertain that the bidder satisfies the following criteria:

1. Legal Requirements. The post-qualification process under this criterion involves the verification and validation of all the licences, permits and other documents submitted by the supplier and ascertaining his claim that he is not included in any Government 'blacklist,'.
2. Technical Requirements. Post-qualification under this criterion means that the procuring entity would have to validate, verify, and ascertain the veracity of the documents submitted by a supplier to prove compliance of the goods and services offered with the requirements of the contract and bidding documents. This involves the following processes:
    (a) Verification and validation of the bidder's stated competence and experience;
    (b) Verification and/or inspection and testing of the goods/products, after-sales and/or maintenance capabilities in applicable cases; or inspection of the plant/factory of a manufacturer, to determine production capacity; and
    (c) Ascertainment of the authenticity and sufficiency of the Bid Security as to type, amount, form and wording, and validity period.
3. Financial Requirements. Under this criterion, the procuring entity ought to verify, validate and ascertain the bid price proposal of

the bidder.

24. What is the Timeline for the conduct of Post-qualification?

Ans. The post-qualification process must be conducted and completed **within 7 (seven) days** from the determination of the LCB. However, in the procurement of goods requiring elaborate testing (such as equipment sourced from abroad) and other exceptional cases, the Head of the procuring entity may suitably extend the post-qualification period.

25. When must the winning bidder and the procuring entity enter into a contract?

Ans. The winning bidder and the procuring entity must enter into a contract immediately after the former has submitted the performance security and all other documentary requirements within the period specified. The parties must sign the contract normally **within 15 (fifteen) days** from the date of notification of award/letter of intent (Ref para 14.31(2) of chapter 14).

26. What is Two-Stage Competitive Bidding?

Ans. The Two-Stage Competitive Bidding is one where the bidding process is divided in 2 (two) stages. The first stage involves the issuance by the procuring entity of bidding documents with technical specifications that are not yet well defined and merely in the form of performance criteria, and the submission by the bidders of their respective Letters of Intent, eligibility requirements, if needed, and initial Technical Proposals without price. This allows the procuring entity to receive inputs from the eligible bidders whose Technical Proposals meet the minimum performance standards, for purposes of drawing up the final revised technical specifications / requirements of the contract. If necessary, a meeting/discussion may be held with these bidders.

The second stage involves the release of the well defined technical specifications by the procuring entity, followed by the conduct of the regular procedure for public bidding with all the bidders identified during the first stage, who shall then be required to submit their respective revised Technical Proposals including their Financial Proposals. (Ref. para 8.7 of chapter-8)

27. What are the instances when a procuring entity may employ the Two-Stage Competitive Bidding Procedure?

Ans. The Two-Stage Competitive Bidding Procedure may be employed for the procurement of goods when:

(1) it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or

(2) the character of the subject matter of procurement is subject to such rapid technological advances and market fluctuations to make open competitive bidding unfeasible; or

(3) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or

(4) the bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement; or

(5) open tendering was engaged in but no tenders were presented or the procurement was cancelled by the procuring entity and where, in the judgment of the procuring entity, engaging in new

open-tendering proceedings or a procurement method under these rules would be unlikely to result in a procurement contract.

The purpose of this bidding procedure is to come up with well-defined, standardised technical specifications, with inputs from all stakeholders, including the bidders themselves.

28. What is the Timeline for the conduct of a Two-Stage Competitive Bidding?

Ans. The timeline for the conduct of a Two-Stage Competitive Bidding will depend on several variables:

1. The Project Timelines as defined by the procuring entity or end-user unit;
2. The technical complexity of the Project; and
3. The time required for drawing up the final technical specifications.

These variables, however, affect only the first stage of the bidding, as well as the drawing up of the final technical specifications. Thus, while the timelines for the first stage may not be definite, the second stage shall follow the timelines prescribed for the regular competitive bidding procedure. In setting the timelines, the procuring entity should ensure that the time periods involved are reasonable and that there is no undue delay of the entire procurement procedure and project implementation.

29. What is the purpose of a Warranty?

A Warranty is required in the procurement of goods to ensure that the supplier, manufacturer or distributor, as the case may be, will correct any manufacturing defect.

30. What is the Warranty requirement for Goods?

Ans. For the procurement of goods, generally a warranty shall be

required from the contract awardee for a minimum period of 3 (three) months, in the case of supplies, and minimum 01 (one) year, in the case of equipment, after the acceptance by the procuring entity of the goods and/or equipment.

31. When shall an article be considered defective?

Ans. It is considered defective when found "unfit for the use for which it is intended," or "its fitness for such use is diminished to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it… A defect can either be:

1. A patent defect, which is one that is apparent to the buyer on normal observation. It is an apparent or obvious defect. For example, a ballpen that does not write is patently defective.
2. A latent defect, which is one that is not apparent to the buyer by reasonable observation. A latent defect is "hidden" or one that is not immediately determinable. For example, a ballpen that writes 0.75 kilometers instead of the expected 1.5 kilometers, has a latent defect.

Both latent and patent defects are covered by the warranty. This means that the procuring entity may proceed against the warranty whenever any of these defects are determined to be present in the goods procured, and the same are determined within the period covered by the warranty. However, wear and tear due to normal usage of the goods is excluded from the coverage of the warranty.

32. What are the grounds for suspension of delivery or contract implementation?

Ans. The procuring entity may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period of time, as it deems necessary due to **force majeure or any fortuitous**

event as stipulated in the contract.

33. What are Liquidated Damages?

Ans. Liquidated damages are damages agreed upon by the parties to a contract, to be paid in case of breach thereof. (Ref. para 10.24 of chapter -10)

34. What are Incidental Services?

Ans. Incidental Services are the services ancillary to the supply of the goods, such as transportation and insurance, instalation, commissioning, provision of technical assistance, training, and other such obligations of the supplier specified in the contract and the bidding documents. In particular, these services may refer to any of the following:

1. Performance or supervision of on-site assembly and/or start-up of the supplied goods;
2. Furnishing of tools required for assembly and/or maintenance of the supplied goods;
3. Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
4. Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under the Contract;
5. Training of the procuring entity's personnel, at the supplier's plant and/or on-site, on assembly, start-up, operation, maintenance, and/or repair of the supplied goods; and
6. Any other related services necessary for completion of the project as stipulated in the contract.

Note : The Incidental Services must be clearly specified in the contract, and identified as separate components from the goods to

be supplied or services to be rendered, so that prices indicated on the price schedule are entered separately. The cost thereof should also be indicated in the contract.

35. What are Spare Parts?

Ans. Spare parts refer to extra components, equipment, tools, instruments or parts of machinery or apparatus that replace the ones, that are damaged or worn out.

36. What information is required from the supplier with regard to spare parts of goods?

Ans. The supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

1. Such spare parts as the procuring entity may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract;
2. Such spare parts that the procuring entity may be able to purchase from other suppliers/manufacturers but are compatible with the goods procured; and
3. In the event of termination of production of the spare parts:
    a. Advance notification to the procuring entity of the pending termination, in sufficient time to permit the procuring entity to procure needed requirements; and
    b. Following such termination, furnishing at no cost to the procuring entity the blueprints, drawings, and specifications of the spare parts, if requested.

The supplier may likewise be required to issue a Certificate that spare parts, particularly those that are product-specific, shall continue to be manufactured by them within a period of time, e.g., 5

(five) years, after the bidding date. The above information shall be included in the Technical Bid.

The procuring entity may include the delivery of a limited supply of fast-moving and/or hard-to-find spare parts in the technical specifications when procuring heavy equipment or machinery. This is to ensure the continued use or operation of the equipment.

37. What standards shall be applied in determining the quality of the goods supplied?

Ans. The goods supplied under the contract must conform to the standards mentioned in the technical specifications, which must preferably be Indian Standards, or standards specified by the Bureau of Indian Standards. If there is no Indian Standard applicable, the goods must conform to the authoritative international standards appropriate to the goods. Such standards must be the latest issued by the concerned institution.

38. What manner of packaging shall be followed by the supplier?

Ans. The supplier must provide such packaging of the goods as is required to prevent their damage or deterioration during transit to their final destination, as stipulated in the contract and in accordance with existing industry standards. The packaging must be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packaging case size and weights must take into consideration, where appropriate, the distance and remoteness of the final destination of goods and the absence of heavy handling facilities at all points in transit.

The packaging, marking, and documentation within and outside the packages must comply strictly with such special

requirements as must be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the procuring entity. Moreover, the outer packaging must contain a "Packing List" which must reflect the actual contents of the package.

39. What is the scope of the procuring entity's right to inspect and test the goods procured?

Ans. The procuring entity or its representative has the right to inspect and/or to test the goods to ensure their conformity to the contract specifications at no extra cost to it. The bidding documents and the contract must specify what inspections and tests are required by the procuring entity, and where these are to be conducted. The procuring entity must notify the supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

The inspections and tests may be conducted on the premises of the supplier or his subcontractor(s), at point of delivery, and/or at the final destination of goods. If conducted on the premises of supplier or his subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, must be provided by the supplier to the inspectors at no charge to the procuring entity.

40. What remedy does the procuring entity has when a supplier is unable to perform his obligations due to bankruptcy or insolvency?

Ans. The procuring entity may at any time terminate the contract by giving written notice to the supplier, if the supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without

compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the procuring entity and/or the supplier

41. The assignment of contractual obligations and the entry of non- bidders into the procurement process, how should it be dealt?

Ans. Assignment of contractual obligations or the contract itself may generally not be done because this will enable a non-bidder to become a party to the contract. This arrangement will make a mockery of the public bidding process, inasmuch as one who was not declared eligible to bid and did not participate in the bidding process will end up as the contract awardee, although indirectly.

Moreover, assignors will only add to the number of parties that the procuring entity has to deal with, thereby complicating contract implementation. This could also be a problem if litigation becomes necessary to enforce the contract.

42. Should each page of the application for registration be signed?

Ans. Yes, each page of the application and its enclosures should be duly ink signed with the firm/company's seal by the authorised signatory(ies). A duplicate copy of the complete application should also be submitted along with the original one.

43. Should a firm/company submit original catalogue for each item/ model?

Ans. Yes, original catalogue from foreign principal or catalogue downloaded from the website of the foreign principal should be submitted.

44. Should a firm/company have a BIS Licence/ ISO 9000 etc. certificates?

Ans. No, these are not mandatory requirement of the applications, however if the applicant firm/company have any of such licence/ certificate, copy of the same may be submitted.

45. How does a Rate Contract differ from Running Contract?

Ans. The difference between the two is that :

(1) the Rate Contract does not commit the purchase to any specific drawal (quantity) while Running Contract is linked with quantitative commitment.

(2) the Rate Contract being a standing offer, can be revoked by the contractor as well as short closed by the purchaser at any time during the currency of the RC by giving a notice of 45 (forty five) days, but this is not so in case of Running Contract.

(3) 'Fall Clause', as a price safety mechanism is available to the purchaser in case of RC, but this facility is not available in Running Contract.

46. If the supplies are effected beyond the validity period of Rate Contract against the supply orders issued upto the last day of validity of Rate Contract, will such supplies be guided by the terms and conditions of the Rate Contract?

Ans. Yes, all such supplies will be guided by the terms and conditions of the aforesaid Rate Contract.

47. In case the procurement process could not be completed in a year, whether or not it could be completed in the subsequent year. If yes, will the fresh administrative sanction be required?

Ans. The procurement process can be completed in the forthcoming year provided budget provision is available for the purpose and the case does not present any unusual features. No fresh administrative sanction will be required, but the financial commitment should be made only after availability of funds for the purpose.